DECISION-MAKING AT THE COURT OF APPEALS LEVEL INVOLVING RELIGIOUS LIBERTY CASES

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Many studies have been completed on factors affecting judicial decisions. Studies have focused on civil rights cases, economic cases, criminal cases, sexual discrimination and obscenity cases, but no work has specifically looked at religious liberty cases. This work examines the factors affecting United States Courts of Appeals judges' decision-making in religious liberty cases. I hypothesize that gender, race, religious background, prior judicial experience, circuit, region and litigant status will all influence the way judges vote in religious liberty cases. The explanatory power of this study is relatively low, but the results indicate that judges follow the law when making decisions in religious liberty cases.

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CHAPTER 1

INTRODUCTION

Many studies have identified the variables that affect the decisions of United States Supreme Court Justices, but it is unclear as to whether the same variables affect lower court judges. Charles Grove Haines (1922) in his pre-behavioralist work listed a series of factors that likely influence judicial behavior and revealed instances in which personal or political ideology plays a part in judicial decisions. Likewise, C. Herman Pritchett (1948), in his groundbreaking book, *The Roosevelt Court,* studied the influence of politics and values on the Roosevelt Court. He examined non-unanimous decisions handed down by the Justices in the years after the New Deal Constitutional Crisis and concluded that political values and attitudes affect justices and the way they vote on issues. His conclusions challenged the traditional legal approach, which explained that people adhere to judges' decisions because judges make decisions "independent of the control of others," are "fair or impartial with respect to the interests of others," and are "expert in applying the rules that everyone, or at least, most people, agree should be applied to resolve disputes" (Tate 1996). This definition implies that judges follow the rule of law and do not respond to or vote their preferences in cases.

John R. Schmidhauser (1961) discussed the tendency of justices to disregard *stare decisis* as well as the influence of sectional identification in the pre-Civil War period. More recently, Jeffrey Segal and Harold Spaeth (1993) scientifically analyze and explain "the Supreme Court, its process and its decisions, from an attitudinal perspective" (p. xv). The authors examined all stages of the Courts' decision-making process to try to explain

and predict behavior. Their attitudinal model allows for the explanation of how the court operates and why justices behave the way they do. Segal and Spaeth "demonstrate that the [traditional] legal model serves only to cloak - to conceal - the motivations that cause justices to decide as they do" (p.1) and "explain that justices' decisions are often based on the political attitudes and values of the justices" (p.1). Their subsequent study, *Majority Rule or Minority Will: Adherence to Precedent on the United States Supreme Court* (1999), examined the role and effect of precedent on Supreme Court justices from its beginnings with the Marshall Court to the present day Rehnquist court. Segal and Spaeth determine that *stare decisis,* or precedent, has very little impact and that Supreme Court Justices vote their personal opinions most of the time.

Though these studies have focused on the Supreme Court, it is possible that many of the same principles apply to lower court judges. Harold Spaeth (1990) concluded that the studies focusing on the Supreme Court may be applicable to the Courts of Appeals because the Courts of Appeals "posses broad autonomy" (p. 317). Additionally, Stern and Gressman (1978) believe that the Supreme Court reviews too few cases to reverse "every misstep by the lower courts," (p. 298) therefore giving lower court judges the ability to vote outside of precedent set down by the Supreme Court.

The Supreme Court, with its interpretation of the Constitution and ruling in cases before it, sets precedent, which in turn helps to set policy in the United States. Though lower courts may not set precedent per se as the Supreme Court does, their policymaking role may be just as important and influential as that of the Supreme Court. J. Woodford Howard (1981) called the United States Courts of Appeals the "vital center of the federal

judiciary" (p.8) and with the litigation explosion since the 1980s the role and importance of lower courts and their decisions has only increased. It is estimated that "fewer than one-half of one percent of Appeals Courts decisions are reviewed by the Supreme Court" (Songer and Haire 1992, 964). Due to the low percentage of cases reviewed by the Supreme Court, "the role of the courts of appeals as the final authoritative policymaker in the interpretation of many areas of federal law expands apace" (Songer 1991, 35).

Since the growth of studies on the Supreme Court, the public law field has also seen numerous studies on personal attributes of lower court judges and their impact on judicial decision-making. These studies include works examining the United States Courts of Appeals and state supreme courts as well as courts of first instance. In an early work, Stuart Nagel (1961) examined the effect of party affiliation on decisions in criminal law, administrative law, civil liberties (not including religion cases), tax law, family law, and business law. Wheeler et al. (1987) studied State Supreme Court cases and the effect of litigant resources on case outcome. Songer and Sheehan (1992) also looked at litigant resources but in relation to the Unites States Court of Appeals. Songer, Davis and Haire (1994) and Songer and Crews-Meyer (2000) studied the role the gender of a judge plays in decision making in search and seizure, employment discrimination, and death penalty cases. Uhlman (1978) reviewed the effect of a judge's race on sentencing of defendants in trial court while Holmes et al. (1993) examined the effect of a judge's race combined with the defendant's race on sentencing outcomes at the trial court level. Walker and Barrow (1985) studied the effect of gender on policymaking and the

effect of race on policymaking in criminal rights, personal liberties, economic, women's policy issue and minority issue cases.

Conclusions concerning the effect of judicial attributes on lower court judges' judicial decision-making are mixed. Donald Songer (1990) concluded that Courts of Appeal hear a wide variety of cases and the judges do have some discretion in their decisions due to the inability of the Supreme Court to review all lower court cases. Four years later, Songer, Segal and Cameron (1994) suggest, "judges on the courts of appeals are relatively faithful agents of their principal, the Supreme Court" (p. 690).

Though these scholars suggest that courts of appeals judges are neutral in the sense that they follow the rule of law, and not personal preference, there is much evidence that shows that judges do not interpret precedent or written law without being influenced by their own backgrounds and prejudices. Carp and Rowland (1983), focused on cases involving criminal justice, government regulation of the economy, support for labor, discrimination, and First Amendment freedoms, found that for cases in which precedent and evidence are equally strong, for new areas of the law, and for issues about which precedents and evidence are ambiguous or contradictory, the traditional model of judicial politics is of little use. The philosophy, attitudes and values of judges help to influence the decision process.

Earlier works on lower court judges and the judicial decision making process are fairly extensive. Personal attribute studies are prevalent and cover a wide variety of case types, but there are few works specifically examining religious liberty cases. Religious liberty cases began to surface in the late 1930s and early 1940s and since that time

religious freedoms of citizens have been a focus of the Court system. Justices and judges alike differ on the intent and interpretation of the First Amendment. The question is not whether the government should establish a religion; or, should individuals be allowed to exercise their personal faith? But rather, can or should the government have any involvement in religion and what is the extent of individual religious freedoms? The first of these two questions is where many judges differ. Some, following the lead of Thomas Jefferson, believe that the wall between church and state should be high and impregnable. Others are more accommodating, believing that the government can be involved with religion as long as that involvement is minimal. Given these different interpretations of the First Amendment, the process by which judges make their decisions is important.

As lower courts have gained more power to influence policy, it becomes important to public law scholars to understand what influences the decision-making processes of judges in all types of cases. Policy makers, outside the realm of the judiciary, need to understand what attributes affect judges, and to what extent these attributes affect judges, in order to better inform presidents who appoint judges and members of Congress who approve judicial appointments.

The purpose of this study is to determine if attributes such as age, gender, religious affiliation, party affiliation, circuit, region of country, appointing president, race, as well as litigant status are determinant factors in judicial decision-making in religious liberty cases. It is hoped that the data and results will help to predict outcomes in United States Courts of Appeals cases involving religious liberty issues. Moreover,

the results, along with those of other studies, might contribute to a greater understanding of judicial decision-making at the lower court level.

CHAPTER 2

JUDICIAL DECISION-MAKING

The decision-making process of judges is significant because judges, whether at the trial level or appellate level, make decisions that have an impact on American jurisprudence. Decision-making by judges is commonly studied through three criteria: the legal model, the attitudinal model and the judicial role perception.

Legal Model

The legal model is based on the basic rules and practices of the legal community. In using the legal model, judges may use one or more of the following criteria to make decisions: plain meaning, Framers' intent, precedent and balancing.

Judicial decision-making using the "plain meaning" criteria simply means that the judge or "judges rest their decisions on the plain meaning of the pertinent language" (Segal and Spaeth 1992, 34). Plain meaning applies to the language of the Constitution, statutes and words of judicially formulated rules (Segal and Spaeth 1992).

The second criterion for decision-making in the legal model is that of Framers' intent. This is generally applied to the Constitution, but can be applicable to statutes and legislation. Framers' intent is the idea that judges examine a statute or Constitutional principle within the context of how the original writers intended it to be interpreted; this is done through the study of notes and documents (Segal and Spaeth 1992).

A third criterion within the legal model is precedent, or *stare decisis*, which is the concept of using decisions made in similar subjects, by other judges in the past, as the

basis for their current decision (Carp and Stidham 1993). J. Woodford Howard's (1981) study concluded,

> adherence to precedent remains the everyday, working rule of American law, enabling appellate judges to control the premises of decisions of subordinates who apply general rules to particular cases (p. 187).

The final criterion within the legal model is balancing. Balancing is weighing an individual claim with the interest of society. There are no systemic guidelines for using the balancing criteria, but it allows judges flexibility to decide individual cases on individual merits (Segal and Spaeth 1992).

The Attitudinal Model

The attitudinal model asserts that judges decide cases "in light of the facts of a case vis-à-vis the ideological attitudes and values" of the judge (Segal and Spaeth 1992, 65). The attitudinal model suggests that a judge's background, such as party affiliation, education, location, age, gender, and religion, will have a significant influence on his or her decision-making process.

Perception of Judicial Role

In order to understand the judicial decision-making process, there must be an understanding of the role judges perceive that they have in the judicial process. Judges may perceive themselves in three basic ways: interpretivists, non-interpretivists, or realists.

Interpretivist judges are those who believe their role is to interpret the Constitution literally. These judges practice judicial restraint and believe that they interpret the law, not make it. Non-interpretivists are judicial activists and believe in

adding to the body of law already in place. These judges believe the interpretation of the Constitution need not be literal, but rather based on the original intent of the framers. Realists are the midpoint. Realists understand the need for strict interpretation of the law as well as the usefulness of judicial fiat "but for most cases a decision can be made by consulting the controlling law or appellate courts' precedent" (Carp and Rowland 1992, 313).

Application of Theory

U.S. Courts of Appeals

The attitudinal model had its beginnings as early as the 1920s, but not until the late 1940s did political scientists begin to give it a closer study. Behavioralists, those who desired to study the law scientifically, began to study the opinions and preferences of the United States Supreme Court. Within the judicial process, the Supreme Court stands alone. Members of the Supreme Court may have more latitude in the decisions they make than lower court judges. This is due to the nature of the Supreme Court appointment. Like other federal judgeships, appointment is for life. Unlike lower federal appointments, Supreme Court justices are not bound by political accountability, nor are many concerned about political positions or careers. In addition, the Supreme Court has the ability to choose the cases on which it will rule.

The extent to which these models apply to lower courts is still uncertain. Lower court judges must be cognizant of how they are deciding the cases before them. This is not just because they are ruling on matters of law, but also because they may have to balance their policy preferences with their career ambitions. Lower court judges may

have opportunities to be appointed to other positions in the judiciary and must be aware of how their decisions may affect the possibility of being nominated and confirmed for other positions. In addition, lower court judges must also be aware of the possibility of the cases before them being appealed. Usually judges do not wish to make a ruling that will be overturned on appeal and therefore are expected to follow the established law and precedent.

Yet, lower courts must be studied differently than the Supreme Court, in part because of their location in the judicial hierarchy. It is expected that United States Courts of Appeals judges will make decisions based on a combination of the legal model, attitudinal model and their own perception of their role.

Judicial Characteristics

Gender

Gender studies within the judiciary were not an issue until President Jimmy Carter's increase of the size of the judiciary because for the first time a President made the judicial appointments women. (Walker and Barrow 1985). Since that time and given the continued increase in appointments of women in the judiciary, the role of gender and its impact on judicial decision-making has become important (Songer, Davis and Haire 1994).

Studies on gender differences have found few obvious differences between male and female judges (Gruhl, Spohn, Welch 1981; Kritzer and Uhlman 1977; Cook 1981; Gottschall 1983; Davis 1986). Gruhl, Spohn and Welch (1981) studied the conviction and sentencing behavior of men and women judges and found no differences in behavior,

except that women judges were more likely to sentence women to prison than male judges. Walker and Barrow (1985) examined the effect gender and race had on U.S. District Court decision-making. Looking at personal rights or liberty claims, criminal rights, federal economic regulation, women's policy issues, and minority issue cases, they found male judges supporting personal rights claims 55% of the time as compared to female judges 37%. Additionally, male judges ruled in favor of criminal defendants 51% of the time compared to women ruling 44% of the time. Women supported federal regulation of the economy 73% of the time as compared to 53% for men. The study also concluded that for gender-specific cases such as gender discrimination or sexual harassment, there was little difference in the voting behavior of male and female judges. Songer, Davis and Haire (1994) concluded there was no difference in the way male and female judges vote in obscenity and search and seizure cases, but that women tended to vote for the alleged victim of discrimination in employment discrimination cases. In a study involving gender and its effect on sentencing of defendants, Steffensmeier and Herbert (1999), found virtually no difference in male and female judges, with the exception of when repeat black offenders were involved. In cases involving repeat black offenders, women imposed harsher sentences. Songer and Crews-Meyer (2000) studied death penalty and obscenity cases from all state supreme courts and found female judges are "substantially more likely to cast liberal votes" in both types of cases (pp. 756-757).

The question of voting behavior of male and female judges is an interesting one, for while the number of female appointments has grown, the general expectation has been that the judiciary would become more liberal. This is attributed to the belief that women

bring different experiences and perspectives to the law, as well as a different set of methods and different desired outcomes than their male counterparts (Songer, Davis and Haire 1994). With this in mind, it is assumed that women will vote differently than men, at least in some types of cases. The question here is whether women vote more liberally in religious liberty cases.

Party Affiliation

The mechanical model of jurisprudence suggests that party affiliation has no influence on judicial decision-making while the attitudinal model suggests that values and attitudes have an effect on decisions of judges. The effect of party affiliation and judicial decision-making has been well studied. Early work, such as Stuart Nagel's (1961a), suggests that party affiliation is a better predictor of judicial behavior than ethnicity. Goldman (1966) studied judicial decision-making on the United States Courts of Appeals and found evidence of voting patterns that are to some extent are "liberal and conservative" on issues of political and economic liberalism, and that party affiliation is associated with voting behavior. A later study by Goldman (1975) revisited the party decision-making relationship and found that it was even stronger than first believed. Carp and Rowland (1983) examined cases for a 44 year period and found that for all cases Democratic judges were 1.33 times more likely to vote liberal than their Republican counterparts. This voting pattern was even stronger for freedom of religion cases in which Democratic judges were 1.52 times more likely to vote liberal as compared to Republican judges. Subsequently, Rowland and Carp (1996) found that the decisiveness

of liberal voting by Democratic judges had grown to 2.71 times more likely to vote liberally in cases from 1977- 1988.

Most studies confirm the suggestions of the attitudinal model, and go as far as to say that party affiliation may be the best predictor of judicial behavior (Carp and Rowland 1983). Judges may claim a political party affiliation before appointment, and it is unreasonable to believe that judges shed this ideology because of their appointment. Party affiliation and ideology then simply become a part of the judicial decision-making process and can be used as an indication or prediction of voting behavior for religious liberty cases.

Race

Early works on judicial decision-making did not include race as a variable because almost, if not all, state and federal Supreme Courts judges were Caucasian (Nagel 1961b). Most studies involving race have looked at either the race of the criminal defendant or the race of the judge or both traits together and their effect on the sentencing of criminal defendants (Goldman 1979; Walker and Barrow 1985; Meyers 1988;Welch et al. 1988;Holmes et al. 1993). Uhlman (1978) found no significant relationship between judicial race and sentencing. Gottschall (1983) studied federal appellate court judges appointed by Carter and found that black judges voted to support criminal defendants' and prisoners' rights more often, but found no difference between black judges and white judges in sex discrimination cases. Walker and Barrow (1985), in their study of U.S. district courts, found very little difference between the decisions white judges made as compared to the decisions black judges made. Their study of personal liberties, federal

economic regulation, application of criminal law and general policy issues "consistently revealed no substantial difference between white and black jurists" (p. 608). Welch et al. (1988) found that black judges sent more defendants to prison, no matter their race, but usually gave somewhat shorter sentences than white judges. Holmes et al. (1993) studied Hispanic judges and white judges in El Paso County, Texas, and found little difference in the way Hispanic judges sentenced white and Hispanic defendants; however, white judges seemed to sentence Hispanic defendants more harshly than white defendants.

Race is an important factor to study because blacks tend to be more liberal than whites on many domestic and some foreign policy issues (Campbell 1979; Ippolito et al. 1976). The research on how minority judges vote in non-criminal cases is limited. Minority judges are thought to be more liberal than white judges because of their party identification, political socialization, socio-economic background and education, (Smith, Michael David 1983) though studies have not shown this to be so. As prior research has indicated, race is a significant factor in the application of criminal law. The few studies that have been completed on non-criminal topics reveal little difference in voting behavior between minority and white judges.

Religion

Religious affiliation of judges may be a useful predictor of judicial behavior. Religion is a socializing agent and it is seen as being the foundation or basis of a culture (Leege 1993). Nagel (1969) found that in the eleven state supreme courts he studied, Protestant judges were more likely than Catholics to support the government in criminal

cases. Ulmer's (1973) study found that Protestant Supreme Court justices were also more likely to support the government in criminal cases than Catholic judges.

Catholicism has been found to be a liberalizing factor in civil rights, religious liberty and economic cases in Canada, the Philippines and in the United States (Tate and Sittiwong 1989: Tate 1972; Tate 1981). Songer and Tabrizi (1999) widened earlier studies by adding Evangelical Protestantism to the scope of their study.[1] Focusing on state supreme court judges and their votes on death penalty, gender discrimination and obscenity cases between the years 1970 and 1993, their findings show that Evangelical Protestant judges are significantly more conservative than mainline Protestant, Catholic and Jewish judges in these cases. Additionally, their study

> suggests that religious affiliation represents a set of influences on the development of the values of judges that are separate from the partisan sources that have been frequently studied (Songer and Tabrizi 1999, 523).

Prior Judicial Experience

Studies involving prior judicial experience for appellate court judges are few. Goldman (1966) found that federal district court experience had little impact on the decision-making process in the United States Court of Appeals. In addition, Nagel (1974) and Bowen (1965) found that there was little or no relationship between judges' previous careers and their voting behavior.

The experience a judge brings with him or her is likely to affect the decisions that the judge makes. A cross-national study by Tate and Sittiwong (1989) found

[1] Songer and Tabrizi's term "evangelical" refers to a white protestant "denomination that believe in Biblical inerrancy and salvation through Jesus Christ" (page 508). For a complete explanation see pages 509-510.

"political/judicial experience produces greater liberalism on civil rights and liberties and economic issues in Canada" (p. 914). In contrast, an earlier study by Tate and Handberg (1991) unexpectedly found that there was no significant impact of prior judicial experience at the Supreme Court level.

Most studies dealing with prior judicial experience have focused on the Supreme Court. This may be due to the fact that many lower court judges are enjoying their first appointment to the bench and therefore scholars have seen little need to include it in studies. U.S. Courts of Appeals judges do not all come directly from their positions at law firms or prosecutors' offices and have usually had some other type of legal experience, and it is this experience that may have an effect on judicial decision-making. Many have served as elected or appointed judges at the state or district court level. Such experience is important for understanding or predicting judicial decision-making.

Appointing President

Many studies on social background and personal attributes of judges and their effect on judicial decision-making include the variable of the appointing president. Carp and Rowland (1983) asserted that presidents take into consideration the political and philosophical ideas of possible judicial appointees. Additionally, they conclude that presidents usually get the desired decisions from their appointments (Carp and Rowland 1983).

In their study of judicial appointments from Woodrow Wilson to Gerald Ford, Carp and Rowland (1983) found appointees of Democratic presidents were more liberal than those appointed by Republican presidents. Segal (1989) studied what presidents

desired from the judges they were appointing: Presidents Taft, Franklin Roosevelt, Lyndon Johnson, Nixon and Reagan were highly concerned about the policy views of judges that they were appointing. Franklin Roosevelt, Wilson and Johnson desired liberal-minded judges while Taft, Harding, Nixon and Reagan wanted conservative-minded judges.

In a study of judicial voting in Indian rights cases, Stidham and Carp (1995) found that judges appointed by Democrats voted liberally nearly 55% of the time as opposed to those appointed by Republicans who voted liberally about 45% of the time. A later study by Rowland and Carp (1996) added Carter and Reagan appointees into the existing study, and found that Democratic appointed judges were 1.47 times more likely to vote liberally than their Republican colleagues. In freedom of religion cases, Carter appointees were 2.32 times more likely to vote liberally than those appointed by Ronald Reagan (Rowland and Carp 1996).

Presidents seek to appoint those whose vote will be similar to their own ideologies, yet judges are not bound by the political ideology of their appointing President and make decisions independently. Judges are believed to be free and independent of political persuasion and, in actuality, most decisions made by judges are done so independently. The question of appointing President and its effect on decisions must be in context with the level of appointment. Supreme Court justices are life appointments and suffer no career influence if they vote against what the appointing president expects. Lower court judges must weigh their decisions in the context of the desire to receive additional appointments at higher levels of the judiciary (Baum 1993).

Case Characteristics

Circuit

The United States Courts of Appeals consists of twelve courts that hear cases for a specific geographic region of the United States. "Studies suggest that each circuit differs from the others in its interpretation of the law and its decisional tendencies" (Carp and Rowland 1983, 86). Goldman (1966) suggests that there are organized voting patterns by judges on the Courts of Appeals, and these patterns tend to be either liberal or conservative on issues such as political liberalism and economic liberalism. Carp and Rowland (1983) studied three time frames between 1933 and 1977 and found, overall, the First (Maine, New Hampshire and Massachusetts), Seventh (Wisconsin, Illinois and Indiana) and D.C. Circuit Courts were the most liberal and that the Fourth (West Virginia, Virginia, Maryland and the Carolinas) and Tenth (Wyoming, Utah, New Mexico, Kansas and Oklahoma) Circuit Courts were the most conservative. A later study by Rowland and Carp (1996) extended the study to include Carter and Reagan appointments (1933-1988). This study showed that the D.C. District Court and the First Circuit Court voted liberally better than 50% of the time while the Fourth and Eighth only vote liberal 37% and 40% of the time respectively.

The United States Courts of Appeals are located in all areas of the country and each court is influenced by its location and the ideas of the people around the court. Judges, as objective as they would like to be, are still influenced by their surroundings. Each circuit court has a different judicial make-up and, therefore, may make decisions differently in religious liberty cases.

Litigant Status

Litigant status is important for predicting the outcome of court cases; studies suggest that "upperdogs," or superior litigants, defined as federal, state, or local governments or their agencies, are favored by the Supreme Court (Barnard 1955; Snyder 1956; Tanenhaus 1960; Canon and Giles 1972). Wheeler et al. studied litigant status in state Supreme Courts and found the government, whether it is state or local, had a 60% success rate in the courts. Galanter (1974) agrees with these claims, but suggests that the superior litigants are favored because the government attorney's are "repeat players" before the court. His studies show that those who have experience in front of appellate courts have greater success. Songer and Sheehan (1989) studied "single shot" players in Appellate Courts and found that those who are "poor" lose more often than others.

Sydney Ulmer (1985) studied the advantage of the federal, state and local governments before the Supreme Court in civil liberties cases from 1903–1968 and concluded that the government lost more cases than it won, but the difference was not statistically significant. He found "no evidence for the view that courts bias for the government and against underdogs in civil liberties cases" (p. 908). Sheehan, Mishler, and Songer (1992) concluded that litigant resources and experience are less important in the United States Supreme Court than at lower appellate court levels. Songer and Sheehan (1992) studied the effect of litigation resources on the success of appellants in Court of Appeals cases. They determined that upperdogs (those with more resources) win more frequently in courts of appeals. Additionally, they predicted the order in which litigants could expect to win: the United States government, state and local governments,

big business (such as railroad or insurance industry), other businesses, individuals, and underdogs.

Litigant status may play a role in judicial decision-making. In part because upperdogs' have the upper hand in terms of resources. Most upperdogs such as federal, state, and local governments, as well as big business have greater financial resources than individuals, and this gives them the advantage in court.

Region

Regional differences have always existed in the United States, and these regional differences influence judicial decision-making. In an early example of region and its influence on judicial decision-making, Schmidhausser (1961) examined judicial behavior during the sectional crisis in the United States. He concluded that party affiliation and region were inseparable for the cases between the years 1837 – 1860, but that regional differences did exist. Tate and Sittiwong (1989) found region to be an important factor for Canadian judges. Canadian Supreme Court judges from the Quebec region tended to be more conservative than those from other regions.

Recent studies suggest that public attitudes and voting patterns vary from region to region within the United States, and with this variation within the public, so comes a variation within the judiciary. Carp and Rowland (1983) suggest that judges within a particular region of the country have ideologies that resemble the overall ideology of the public in that geographic region. Their study looked at the differences between the North and the South and the East and the West and found modest differences for cases from 1933-1977. A later study (Rowland and Carp 1996) suggested that in civil liberties cases

from 1933-1988, the northern and western regions voted more liberally than the southern and eastern regions. They also concluded the difference between the North–South vote has maintained a greater difference than the East-West vote. In other words, the differences between the way judges vote in the North versus the South have remained more robust than those differences between judges in the East versus West.

Regional differences are likely to provide differences in attitudes and ideologies of Courts of Appeals judges. The differences between northern and southern issues have existed for years within the United States and it remains an important variable to discuss in terms of attempting to predict judicial decision-making.

Summary

Judicial and case characteristics are important predictors in judicial decision-making. Personal attributes of judges alone may be significant predictors of judicial decision-making. Case characteristics may also serve the same purpose, but the combination of the two may prove to be a highly significant predictor of judicial behavior.

CHAPTER 3

SUBSTANTIVE POLICY DOMAIN

Religious Liberty

English colonists of early American settlements came to the new world for many reasons. Some came seeking economic benefits (Virginia, for example); others came seeking religious reform (Massachusetts, for example); yet others were seeking to establish a particular church denomination (Pennsylvania, for example).

Regardless of their original motivations, however, most colonies eventually created established churches, and within these colonies the settlers were "no more tolerant of religious dissenters than were those from whom they had fled" (Cord 1983, 3). Though intolerance of other religions was abundant in many colonies, there were exceptions. In 1645, the Plymouth General Court wanted to allow "full and free tolerance of religion," but was denied vote on the subject by the Governor (Urofsky 2002, 27). Rhode Island, founded by Roger Williams allowed almost total religious liberty and southern colonies were generally more tolerant of religion than their northern counterparts (Urofsky 2002).

During the Revolutionary Era some states separated their churches from state interference or control while other states continued to have state-supported churches into the nineteenth century. Many states continued to restrict "Catholics and Jews, imposed a test oath for office-holding, and continued to finance the religious activities of churches and ministers through taxation" (Urofsky 2002, 31). Virginia, where Jefferson's and Madison's influence for a wall of separation between church and state was seen, because

the first state to grant religious freedom with the passage of the Virginia Statute for Religious Freedom (1786). The Virginia Statute provided that

> all men shall be free to profess, and by argument to maintain, their opinion in matter of religion, and that the same shall in no wise diminish, enlarge, or affect their unit capacity (Urofsky 2002, 31).

The debate over religion and its influence of or by the national government began with the Constitutional Congress in 1787. The Constitution did not grant religious freedom or prevent religion from being established by the federal government; it only served to prohibit religious tests for federal office (Article VI Sec 3). It is important to note that Article VI Section 3 only pertains to the federal government; thus state governments remained free to employ religious tests or oaths. The Constitution was ratified in 1787-1788 on the condition that the Bill of Rights would be added to protect certain human rights. Included in these rights was the desire by the states to have an amendment

> to prevent the establishment of a national religion or the education of a particular religious sect to preferred status as well as to prohibit interference by the national government with an individual's freedom of religious belief (Cord 1982, 6).

The first Congress met in 1789 and was headed by James Madison; the Bill Of Rights was written and ratified by 1791. The First Amendment of the United States Constitution states "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." These clauses, taken together, provide protection of and from religions being created by the federal government.

Application To The States

Fourteenth Amendment

Thomas Jefferson, James Madison and other founding fathers understood that the Bill of Rights in general and the religious freedoms in the First Amendment specifically were targeted toward the federal government. As early as 1833, in *Barron v. Baltimore*, the Supreme Court ruled that the Fifth Amendment was a restraint on the federal government. This decision led to the logical conclusion that the first eight amendments were applicable only to the federal government and not to the individual states. In 1845, the Supreme Court ruled that the religious clauses of the First Amendment were applicable only to the federal government.[2]

The Fourteenth Amendment, added in 1868, says "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law...;" with its passage came a new wave of cases attempting "to apply the governmental restrictions of the Bill of Rights to the states" (Cord 1982, 89). This attempt came from two clauses within the Fourteenth Amendment, Section 1: the Privileges and Immunities Clause and the Due Process Clause.

The first attempt to apply the privileges and immunities clauses to the states came through the *Slaughter- House* cases in 1873. The court ruled, by a 5-4 vote, "citizenship in the states and the United States to be distinct and separate and the Fourteenth Amendment to apply only to National Citizenship" (O'Brien 1997, 246). In short, the

[2] *Permoli v. New Orleans* 1845.

court ruled that the Bill of Rights was still not applicable to the states, at least not through the privileges and immunities clause of the Fourteenth Amendment.

While the privileges and immunities clause was being denied application to the states, there were cases in the courts attempting to make the Due Process clause applicable to the states. The Due Process Clause of the Fourteenth Amendment is an exact copy of the Due Process Clause in the Fifth Amendment. The concept of "due process" comes from English common law as far back as the Magna Carta (1215) and is generally understood to mean "the law of the land" (O'Brien 1997, 247). In other words, the Due Process Clause served as a procedural restraint on the power of the government, but this will not remain the only interpretation of the clause after the addition of the Fourteenth Amendment. In *Davidson v. New Orleans* (96 U.S. 97 1878), it was argued that the Due Process Clause of the Fourteenth Amendment was not only a procedural restraint, but also a substantive restraint of governmental power (Cord 1982). Substantive constitutional rights are those that tend to limit the legislative goals that a constitutional government might legitimately pursue (Cord 1982, 96, n 33). Justice Miller, writing for the court, refused to interpret the Due Process Clause substantively. He wrote:

> There is here abundant evidence that there exists some strange misconception of the scope of this provision as found in the Fourteenth Amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State court of justice of the decision against him, and of the merits of the legislation on which such a decision may be founded (O'Brien 1997, 248).

In *Hurtado v. California* (110 U.S. 516, 1884) the court declared that the states did not have to abide by the Fifth Amendment's requirement of an indictment by a grand jury, but rather that the Fourteenth Amendment due process clause allows for each state to "experiment with [its] own criminal justice procedures" (O'Brien 1997, 295).

The "progressive era" of politics led to attempts to stop corporate or big business abuses by states' enacting laws and commissions to regulate business practices and to guarantee production and employment standards. The Supreme Court responded with its laissez-faire economic policies by "declaring unconstitutional under the Fourteenth Amendment these state legislative and administrative attempts to regulate private enterprises and property." (O'Brien 1997, 295)[3] With these decisions, the court established substantive rights regarded as "liberties," and though these economic rights were not an application of the Bill Of Rights to the states it opened up the ability to argue on substantive rights.

Though several cases were argued and won on substantive arguments,[4] the Supreme Court's view of the relationship of the Bill of Rights and Due Process Clause of the Fourteenth Amendment remained unchanged until 1925. *Gitlow v New York* (268 U.S. 652, 1925) argument was that the First Amendment freedoms of speech and the press were extended to state governments through the Due Process Clause of the Fourteenth Amendment. The Court said:

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[3] See *Chicago; Milwaukee and St Paul Ry. Co. v. Minnesota* 134 US 418 (1890); *Allguyer v. LA* 165 US 578 (1897); *Lochner v. NY* 198 US 45 (1950); *Adkins v. Children's Hospital* 261 US 525 (1923).

[4] *Meyer v. Nebraska* 262 US 390 (1923); *Pierce v. Society of Sisters* 268 US 510 (1925)

> For present purposes we may and do assume that freedom of speech and of the press – which are protected by the First Amendment from abridgement by Congress – are among the fundamental personal rights and "liberties" protected by the Due Process Clause of the Fourteenth Amendment from impairment by the states (Cord 1982, 99-100).

By the 1940s, and in a series of cases, the First Amendment and the freedom it grants had been made applicable to the states in its entirety by the due process clause of the Fourteenth Amendment.[5]

Judicial Doctrine

Free Exercise Clause

Case history on religious liberty is extensive. An early decision stated that the First Amendment was designed to allow all people under the law of the United States to have their own ideas about their relationship to the Maker and the worship thereof. This decision also prohibits legislation that supports any sects' form of worship (*Davis v Beason*, 133 U.S. 333, 1890). For nearly 150 years, the First Amendment was applicable only to the federal government, which allowed state and local governments some interaction between government and religion. Shortly after the *Palko v Connecticut*, (302 U.S. 319, 1937) decision that made the First Amendment applicable to the states through the Fourteenth Amendment, religious liberty cases began making their way through the court system.

These early cases would be termed religious liberty cases today, but were decided on the basis of free speech[6] (Rotmen 1942). The first case truly decided on the basis of

[5] See *Near v Minnesota* 283 US 697 (1931); *Powell v Alabama* 287 US 45 (1932); *Hamilton v Regents of the University of California* 293 US 245 (1934); *DeJorge v Oregon* 299 US 353 (1937).

religious liberty was *Cantwell v Connecticut* (310 U.S. 296, 1940), which served two purposes. The first purpose was to set down the basic interpretation of the concept of free exercise. The Court ruled that the right to think and believe what one wishes about religion is absolute, while actions along with these thoughts and beliefs are subject to limitation for the cause of peace and order. The second purpose was to make the free exercise clause of the First Amendment applicable to the states through the Fourteenth Amendment.

Each clause of the First Amendment provides a different protection for the citizens of the United States and therefore deserve separate discussions. The first clause known as the free exercise clause provides freedom from coercion by the government in choosing a religion or no religion. Free exercise of religion is not an absolute as "individuals may be prosecuted for certain religious practices and compelled to comply with regulations and laws that contravene their religious beliefs" (O'Brien 1994, 727). Though free exercise is not an absolute, it has been strictly applied to the government in that the government must remain neutral with regard to religion.

Free exercise case law pre-dates *Cantwell* by about forty years. *Reynolds v U.S.*, 98 U.S. 145 (1879), which originated in the Utah territory, banned the practice of polygamy even in the context of the Mormon religion. After *Cantwell*, free exercise cases before the Supreme Court become common. In *Minersville School District v Gobitis* 310 U.S. 586 (1940), the Supreme Court ruled that compulsory flag saluting in

[6] These cases involved Jehovah's Witnesses on a variety of issues ranging form solicitation and handbill distribution to flag saluting. For a complete discussion of these

public schools did not violate the Constitutional rights of Jehovah's Witness schoolchildren. Justice Frankfurter argued that the legislation requiring flag saluting was "of general scope and not directed against doctrinal loyalties of particular sects" (*Minersville v. Gobitis,* 310 U.S. 586 , 1940). Three years later the Court reversed itself in *West Virginia State Board of Education v. Barnette* 319 U.S. 624 (1943). In this case, Justice Jackson explained that

> local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of the intellect and spirit which it is the purpose of the First Amendment (O'Brien 1994, 620; *West Virginia State Board of Education v. Barnette* 319 U.S. 624, 1943).

Additionally, the Court upheld the laws requiring the closing of business on Sundays over objections by Orthodox Jews[7] as well as the prohibition of handbills and solicitation on fairgrounds[8].

The rulings in these cases all sought neutrality and the enforcement of the secular regulation principle. In *Sherbert v. Verner,* 374 U.S 398 (1963) the Court created an exception to the strict state neutrality principle with the "least drastic means" test. Basically, the least drastic means test allows for the Court, when accommodating free exercise claims, to balance "those claims against competing governmental interests, taking into consideration the nature of the regulation, the centrality of a religious belief, and the equality in treatment of religion" (O'Brien 1994, 793). In *Sherbert*, the Court

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cases see Rotmen, Victor W. (1942) "Recent Restrictions Upon Religious Liberty." *American Political Science Review* 36:6 1053-1068.

[7] *McGowan v Maryland,* 366 U.S. 420, (1961) and *Braunfeld v Brown* 366 U.S. 599, (1961)

[8] *Heffron v International Society for Krishna Consciousness* 452 U.S. 640, (1981)

struck down a South Carolina law that denied unemployment compensation to a Seventh Day Adventist who refused to work on the Sabbath. This principle was also applied in *Wisconsin v Yoder* 406 U.S. 205 (1972), which allowed for an exception to Wisconsin's compulsory school attendance law for the Amish after the eighth grade.

The use of the least drastic means test does not always result in favor of the religious principle before the Court. On occasion, the Court has ruled that the government's interest "may simply outweigh free exercise claims, despite their coercive effect on religious beliefs and practices" (O'Brien 1994). In *Goldman v Weinberger*, 475 U.S. 503 (1986), the Court ruled that the military has the ability to deny the wearing of religious garb, in this case a yarmulke. In addition, the government's position of the need for citizens to have Social Security Numbers, even in cases where it is objected to on religious grounds, was upheld in *Bowen v Roy* 476 U.S. 693 (1986).

Establishment Clause

The second part of the First Amendment is the Establishment Clause, which can be interpreted in two ways. The first is that the clause outlaws only the creation of an official church by the United States government. The second interpretation is much broader and encompasses "any government support or connection with religion" (Pritchett 1984). With these definitions in mind, the decisions in establishment cases have fallen into three interpretations: strict separation, strict neutrality, and accommodationists. Strict separation is based on Thomas Jefferson's metaphorical "wall of separation between church and state." Jefferson stated this idea at the founding of the United States, but it was not put into use until the case of *Everson v. Board of Education*

of Ewing Township, 330 U.S. 1 (1947). The Vinson Court ruled in favor of the reimbursement of transportation costs to parents of children attending private parochial schools, but did so, not because it benefited the religious school, but the parents directly. In Justice Black's opinion for the majority in *Everson,* he wrote, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."

In the 1948 case of *McCollum v. Board of Education*, 333 U.S. 203, the Court struck down a program that allowed students to voluntarily attend religious instruction by non-school related instructors on school grounds. But, four years later the Court ruled that a released time program in which students received religious education "off-campus" did not breach the wall of separation.[9]

Following rulings by the Vinson Court, the Warren Court generally kept the wall of separation high. In *Engel v. Vitale* 370 U.S. 421 (1962), the Court struck down a New York law requiring the recitation of a nondenominational prayer at the beginning of each school day. A year later, in *Abington School District v. Schempp* 374 U.S. 203 (1963) the Court ruled that required recitation of the Lord's Prayer and Bible reading in a public school classroom also violated the Establishment clause. In this ruling the Court laid down the principle of the "secular purpose test." This test stated, "to withstand the strictures of the Establishment clause, there must be a secular purpose and a primary effect that neither advances nor inhibits religion." This test was used in *Epperson v.*

[9] *Zorach v Clauson* 343 US 306 (1952)

Arkansas 393 U.S. 97 (1968) to strike down the law forbidding the teaching of evolution in public schools or publicly funding colleges.

The Supreme Court began to shift to a more accommodationist view under Chief Justice Burger. The idea of excessive governmental entanglement was introduced in the case of *Walz v. Tax Commission of the City of New York* 397 U.S. 664 (1971). This case involved a tax law, which stated that tax exemption status for property could only be for those properties that were solely for religious use. The Court ruled,

> either course, taxation of churches or exemptions, occasions some degree of involvement with religion…[The question is] whether it is…leading to an impermissible degree of entanglement (Pritchett 1994, 123).

The Court ruled tax exemption status in this case did not lead to excessive entanglement.

A year later in *Lemon v. Kurtzman* 403 U.S. 602 (1972), the Burger Court created a three-pronged test for cases involving the Establishment clause. The *Lemon* Test set down that a law or government policy must, (1) have a secular purpose, (2) have a principal or primary effect that neither advances nor inhibits religion and (3) not excessively entangle the government with religion.

Though the *Lemon* test helped create consistency in determining which cases reached the Supreme Court, it did not. The Rehnquist Court has been bitterly divided on the application and even the validity of the *Lemon* test, and it has been split on the issue of the Lemon test numerous times. The ambiguity of the *Lemon* test can be seen in *Lynch v. Donnelly* 465 U.S. 688 (1984) and *County of Allegheny v. American Civil Liberties Union Greeter Pittsburgh Chapter*, 492 U.S. 573 (1987). In *Lynch v. Donnelly*, the Court narrowly upheld the use of a city sponsored crèche scene during the Christmas season in

Pawtucket, Rhode Island by finding no excessive entanglement between government and religion. Three years later in *County of Allegheny v. American Civil Liberties Union Greeter Pittsburgh Chapter*, the Court limited *Lynch* by ruling that a crèche scene inside a city building violated the Establishment Clause. In *Wallace v. Jaffree* 472 U.S. 38 (1985), the Court ruled against a statute in Alabama mandating a moment of silence to begin the school day, citing the lack of a secular purpose for the law. The narrow majority decision in *Lee v. Weisman*, 505 U.S. 577 (1992), held that school-sponsored prayers at graduation ceremonies "places public pressure as well as peer pressure" for those in attendance to be respectful during the time of prayer and thereby violates the Establishment clause.

Religious liberty has been an issue in the Unites States since its formation. Religious liberty will cases will continue to set precedent for years to come. The job of Justices and judges alike is to rule on religious liberty cases on the basis of the law while weighing it with the issues before them.

CHAPTER 4

DATA

The data in this study consist of votes cast by judges on the United States Courts of Appeals from 1940 to January 2002 in religious liberty cases. The data begin with the 1940 Supreme Court decision of *Cantwell v. Connecticut* and continues to February 2002. *Cantwell* is the logical starting point for this research as it is the first case in which the religion clauses in the First Amendment were applied to the states through the Due Process Clause of the Fourteenth Amendment. Cases were collected using the *Westlaw* internet database of court cases. A key word search, using the words "free" and "exercise" within two words of one another, was used to search the Courts of appeals cases. The database includes all circuits after 1944 and the US Courts of Appeals cases from 1891-1945 database.

This process found 870 cases and a content analysis of each of these cases was conducted to find the appropriate religious speech, Free Exercise, Establishment Clause and conscientious objector cases. This analysis removed cases that were considered to be free speech, free association or labor relation cases. In addition, the content analysis removed all cases involving religious questions in prisons. These cases were excluded due to the fact that prisoners' rights and freedoms are limited for the protection and order of the criminal justice system. Such cases were excluded because prisoner cases generally consist of a prisoner or inmate petitioning for the ability to practice some type of religious activity and the inclusion of prisoner cases, which are most often lost by the

prisoner, would likely skew the results of this study[10]. Of the 870 original cases, 225 cases were found to deal with religious speech, Establishment Clause, Free Exercise or conscientious objector issues.

A content analysis was then completed on the 225 cases included in the study. Each case was identified and coded as a religious speech, an Establishment Clause or a Free Exercise Clause case. Cases determined to be more than one type were coded as such so categories are not mutually exclusive. The case characteristics of circuit, region and federal government involvement were also coded for each case.

After coding the case characteristics, each judge presiding over a case was listed along with their gender, date of birth, party affiliation, religion, race, appointing president, and previous judicial experience.

Finally, each vote by each judge was coded as either a conservative vote or a liberal vote. Conservative votes are defined as those instances in which the judge voted to protect the church or to expand religion or a religious activity. Liberal votes are defined as those instances in which the judge is voting against the church (not to protect it) or to restrict or constrict religion or a religious activity.

After the collection and coding of data a LOGIT analysis was utilized. The LOGIT model provides a more accurate indication of the data rather than a linear regression model. A LOGIT analysis "provides a global test for significance of a set of predictors in the model, as well as, a test for the significance of a set of predictors

[10] Prisoners are often plaintiffs in free exercise cases but almost always lose on the basis of their incarceration. The courts generally find for the defendant (the prison or state) on the basis of maintaining good order within the prison community.

controlling for other effects" (Demaris 1992, 1). In addition the use of the LOGIT model allows for the results to be translated into an odds ratio or the probability of a favorable result.

LOGIT is derived from the natural logarithm of the odds in which the odds is the probability of an event happening (Spaeth and Segal 1992). The LOGIT analysis in this model allows one to ascertain the odds of a liberal vote in religious liberty cases given all independent variables. The log odds of a liberal vote in religious liberty cases are given as a linear function of a judge's age, gender, race, religion and so forth.

The dependent variable, liberal vote, was run against the independent variables of date of birth, gender, race, religion, federal government as the antireligious plaintiff and anti religious defendant, circuit, region, judicial experience, and appointing president. The results of the LOGIT analysis determine an estimation of the contribution each independent variable makes to the likelihood that the judges vote will be liberal in religious liberty cases.

Previous works have looked at personal attributes and case characteristics in a variety of case types. No previous work has incorporated personal attributes into a study specifically examining religious liberty cases.

Hypothesis 1. Female judges are more likely to vote liberally or to constrict religion.

Gender has not been a significant influence on judicial voting behavior with the exception of personal rights or liberty claims. With this is mind it is expected that women will vote more liberal or in a positive direction in religious liberty cases than their

male counterparts. This is expected because of the perceived differences in the socialization of men and women.

Gender was coded for each judge with male judges being coded with a 0 a female judges being coded with a 1.

Hypothesis 2. Judges who claim the Democratic Party at the time of appointment to the Court of Appeals are more likely to vote liberally or to constrict religion.

Party affiliation is an important factor in predicting voting behavior of judges. Party affiliation is expected to have an impact on the way judges' vote in religious liberty cases because party affiliation and ideology may simply become a part of the judicial decision-making process. The expectation is that judges claiming the Democratic Party will vote to more liberal or in a positive direction in religious liberty cases.

Party for each judge was listed as the party affiliation each claimed at the time of appointment. Those claiming the Republican Party were coded 0 while those claiming the Democratic Party were coded 1.

Hypothesis 3. Judges who serve on the Fourth, Fifth and Tenth Circuit Courts are more likely to vote conservatively or to expand religion or a religious activity while judges who serve on the First, Seventh, and D.C. Circuit Courts are more likely to vote liberally or to constrict religion[11].

Prior research has shown that the Fourth, Fifth, and Tenth Circuits tend to be more conservative than the other Circuit Courts while the First, Seventh, and D.C. Circuit

Courts tend to be more liberal than the other circuit courts. It is expected the First, Seventh, or D.C. Circuit Courts will vote more liberally in religious liberty cases and the Fourth, Fifth and Tenth Circuits will vote more conservatively in religious liberty cases than the other circuit courts because of regional ideology and its influence on judges.

In order to code the Circuit two dummy variables were created: conservative and liberal. Cases that were heard by the Fourth, Fifth and Tenth Circuit Courts were coded 0 under the liberal variable and 1 under the conservative variable. Cases that were heard by the First, Seventh, or D.C. Circuit Courts were coded 1 under the liberal variable and 0 under the conservative variable. Cases not heard in the First, Fourth, Fifth, Seventh, or D.C. Courts were coded 0 for both variables.

Hypothesis 4. Minority judges are more likely to vote liberally or to constrict religion.

Research is limited on race and its affect on judicial decision making in non-criminal cases. It is therefore an important variable to study. It is expected that minority judges, that is judges who are African America, Hispanic American, and Asian American, will vote more liberally than their white or Caucasian counterparts will in religious liberty cases.

Race was coded as Caucasian or minority. Minority judges are those judges who are African American, Hispanic American, Asian American or Native American were coded as 1 while Caucasian judges were coded 0.

[11] Liberal courts were chosen by using the results from Carp and Rowland's 1983 study.

Hypothesis 5. Judges ruling in cases in which the federal government is involved are more likely to vote in favor of the government's position.

Research shows that upperdogs have an advantage in the judicial system. Those plaintiffs or defendants that are either the government or government related are more likely to win in court. It is therefore expected that in those cases in which the federal government is involved, judges will be more likely to vote for the government's position.

For cases in which the federal government was involved, the case was coded as to what side the government represented: plaintiff or defendant as well as whether the government was in favor of or against the religious activity in question. Therefore the case may have been coded as federal government as religious defendant, federal government as anti-religious defendant, federal government as religious plaintiff or federal government as anti-religious plaintiff. In addition, it was noted as to whether the federal government won or lost each case in which it was involved.

Hypothesis 6. Judges who claim a conservative or evangelical religious affiliation are more likely to vote conservatively or to expand religion or religious activity.

Religious background of judges may be an important variable in predicting outcome in civil rights and liberty cases in general and may be of great use in religious liberty cases. Religion is a socialization factor, maybe more so than the other variables in this study and it is therefore reasonable to expect that judges who claim a conservative or evangelical religion will vote more conservatively in religious liberty cases because they desire to protect religion.

Religion is a difficult variable to code. The definitions for this study followed the pattern of the work done by Kellstedt and Green (1983) in which they classify religious denominations by their "comparable beliefs and ethos" (p. 58).[12] Judges claiming a Protestant denomination not listed in Kellstedt and Green's study were coded as Protestant. To code religion[13] four dummy variables were created: Protestant, Evangelical, Roman Catholic, and Jewish. Those judges who claimed association with one of these denominations or religions were coded one for that variable and zero for all other dummy variables. The variable Protestant was excluded from the LOGIT model and therefore all remaining religion variables are estimates relative to those of "protestant" judges.

Hypothesis 7. Judges who have prior judicial experience before coming to the Court of Appeals are more likely to vote liberally or to constrict religion.

Previous works on the affect of judicial experience on the decision-making process at the Appellate Court level are limited and most do not include the prior experience of lower court judges. The previous judicial experience of Appellate Court judges may be limited, but may also be a determining factor for voting in religious liberty cases. Those who have federal judicial experience may feel less constrained by precedent or may not be a conscious of their position.

[12] For a more complete understanding of how they divided the religious groups and sects see Kellstedt and Green 1993, pages 57-58.
[13] For many judges religion was not available due to "lack of response to questionnaire" in the Zuk, Barrow and Gryski dataset or lack of availability of information for judges appointed after 1994.

Judges in this work were coded as "1" for prior federal judicial experience or "0" for no prior federal judicial experience.

Hypothesis 8. Judges who are from the South are more likely to vote conservatively or to expand religion or religious activity.

Studies have shown regional differences in the way judges' vote in certain types of cases. As children, judges are socialized where they live and many, if not most, judges are appointed to the bench in areas close to where they live (Carp and Rowland 1984). In addition, judges are influenced by the political happenings around them that may not be common in other parts of the country. It is the expectation of this study that judges from the south are more likely to vote conservatively in religious liberty cases.

Three dummy variables were created: south, Confederate, and border. These variables were then coded based on the sectional lines created by the Civil War. The Confederate includes the Confederate States of South Carolina, Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, Virginia, Arkansas, North Carolina, and Tennessee. The south includes all states included in Deep South as well as the border-states of Maryland, Delaware, Kentucky and Missouri. Non-south includes all other states as well as the territory of Puerto Rico. This was done to determine if there is a difference in voting behavior between former Confederate States and southern states.

Hypothesis 9: Judges appointed by Democratic presidents are more likely to vote liberally or to constrict religion.

Presidents generally appoint judges to the bench that have similar ideas and beliefs as their own. It is therefore the expectation of this study that judges appointed by Democratic presidents will vote more liberally in religious liberty cases.

To code appointing president eleven dummy variables were created: FDR, HST, DDE, JFK, LBJ, RMN, GRF, JEC, RWR, GHB and WJC. If the judge was appointed by that president the dummy variable was coded one, otherwise it was coded zero. FDR was excluded from the LOGIT model and therefore the remaining presidential appointments are referenced relative to appointees of FDR.

CHAPTER 5

RESULTS

The expectation of this study was that personal attributes and case characteristics would influence judicial decision-making in religious liberty cases. The examination of 870 votes by judges of the Courts of Appeals show mixed results. Though some variables are significant they are not always in the predicted direction and no model explains more than 13% of the votes within the model.

Model 1

The result of the LOGIT analysis for all variables shows an R^2 value of .1314. This means that only 13.1% of the votes by judges in the religious liberty cases examined can be explained by the variables included in the model. This is a small percentage but the model still produced some statistically significant variables.

Significant Variables

Region

In the first model, the regional variable used was that of the former Confederacy. The results from this model show judges from the former Confederate states with a z-score of .00 in a negative direction (see table 1). This is interpreted to mean that judges appointed to circuits within the former Confederacy are more likely to vote conservatively in religious liberty cases than those from outside the former Confederacy. Judges from with in the former Confederacy are less likely to vote to restrict or constrict religious activity than those outside the former Confederacy. These findings are consistent with the previous work of Rowland and Carp (1996) in which they concluded

that there were significant regional differences, especially between the North and the South. The variable for former Confederate States will remain statistically significant for each subsequent model in which it appears.

Table 1: Full Model with Confederate States

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.231	.4469	-.51	.30
Liberal circuit	.1757	.2890	.60	.27
Confederate states	-.5989	.2260	-2.65	.00**
Age	-.0102	.0152	-.669	.25
Gender	1.004	.4286	2.34	.00**
Prior experience	-.0341	.2200	-.15	.43
Catholic	-.0079	.2486	-.032	.46
Jewish	-.3178	.3066	-1.03	.15
Evangelical	.6086	.3922	1.522	.06
Eisenhower	-1.944	.9322	-2.08	.01**
GHW Bush	-1.462	1.220	-1.19	.11
Ford	-1.466	1.096	-1.33	.09
Truman	-1.864	1.19	-1.56	.05*
Carter	-1.848	.9973	-1.85	.03*
Kennedy	-2.343	1.023	-2.28	.01**
LB Johnson	-2.349	.9336	-2.51	.00**
Nixon	-1.611	.9613	-1.67	.04*
Reagan	-1.489	1.07	-1.38	.08
Clinton	-1.120	1.308	-.857	.19
Free exercise case	1.640	.286	5.72	.00**
Establishment case	-.2071	.220	-.942	.17
Religious Speech case	.2096	.4122	.509	.30
Party	.0857	.1321	.649	.25
Federal government as an anti-religious plaintiff	1.2025	.4909	2.44	.00**

N= 538
* = Significant variable
** = Highly significant variable

Gender

The next significant variable is that of gender. This study hypothesized that there is a greater probability of female judges voting in favor of those wishing to constrict religion. The z-score for gender in the first model is .00 with a positive coefficient. This indicates that female judges are more likely to vote liberal or vote to constrict a religious activity than their male counterparts. The results in this model as well as subsequent models are consistent with previous research on gender. Results of previous studies vary with the type of case involved in the work. In personal rights or liberty cases as well as government economic involvement, Walker and Barrow (1985) found that male judges are more likely to vote more conservative than female judges.

Appointing President

Initial results of a model with Presidential party affiliation along with judicial party affiliation reveal the two variables are highly collinear. In order to correct for the problem each appointing president variable was run as a dummy variable and diagnostic test results revealed multi-colinearity was no longer a problem. The variables for appointing president were compared to votes cast by judges appointed by Franklin Roosevelt and provide interesting results. It is hypothesized that the probability of judicial appointments made by Democratic Presidents voting vote against expanding religious activity is higher than those appointed by Republican Presidents. Table one indicates mixed results. Carter appointees, with a z- score of .01 along with Kennedy appointees with a z- score of .01 and L.B. Johnson appointees with a z- score of .00 are all more likely to vote to restrict religion as hypothesized and will remain significant in subsequent models. These results are in line with previous research such as Carp and

Rowland (1983) who found Democratic appointees were more liberal than Republican appointees. The more surprising results from this model are Eisenhower appointees, with a z- score of .01, Truman appointees, with a z- score of .05 and Nixon appointees, with a z- score of .04 are all more likely to vote to restrict religion as well, which are opposite of the hypothesis as it was expected that judges appointed by Republican presidents would vote to protect religion or religious activity. These last results are in conflict with previous works, which have not found Republican Appointees particularly likely to vote liberally, but also point out that judicial appointments are not bound to the ideology of their appointing president.

Case Type

The variable representing free exercise cases is significant with a z- score of .00 with a positive coefficient. This is interpreted to mean that there is less of a probability of a favorable vote to expand or protect religion when the issue is perceived as a free exercise case. Though case type was not hypothesized in this study specifically, free exercise cases will remain a significant indicator of judicial vote in subsequent models.

Litigant Status

The final significant variable in this model is litigant status. This model included the federal government as the anti-religious plaintiff with a z- score of .00 with a positive coefficient. It was hypothesized that federal governmental involvement would result in a favorable result for the government. This first model reveals that it more likely that judges will vote favorably for the federal government when it is trying to restrict religious activity. The federal government receiving a favorable vote supports previous works by

Gallanter (1974) and Songer and Sheehan (1982) and the variable he federal government as an anti-religious plaintiff will remain significant in subsequent models in which it is included.

Insignificant Variables

Race

Judges from minority groups were expected to vote more liberally or to constrict religion more than their Anglo or Caucasian counterparts. In this model race was not a statistically significant indicator of judicial behavior with a z- score of .30. Though the expectation that minority groups would vote more liberally than Anglo on Caucasian judges, the results of this work are consistent with previous work completed by Walker and Barrow (1985). Walker and Barrow (1985) examined how race affected decisions involving personal liberties and economic regulation as well as how the law was applied in criminal cases. Race may be a factor in the application of law and sentencing of defendants (Welch et al. 1988 and Welch et al. 1993) but race will remain an insignificant variable for determining judicial votes in subsequent models in this study.

Circuit

In this first model, the variable liberal circuit was used and was hypothesized that judges from the first, seventh and D.C. courts would vote to constrict or limit religious activities. Liberal circuit was found to be an insignificant indicator of judicial behavior with a z- score of .27. This indicates that judges from the First, Seventh and D.C. courts are no more likely to vote to restrict religious activity than judges from other circuits. These findings are inconsistent with previous works completed by Carp and Rowland

(1983 and 1996) in which they found the First, Seventh and D.C. courts were significantly more liberal than the remaining courts. The variable representing liberal circuits will remain insignificant in subsequent models in which it is contained.

Age

The age of a judge was hypothesized to vary inversely with the liberal votes of a judge; the older the judge is the more likely he or she is to vote conservatively or to protect religious activities. The age of the judge had a z- score of .25 in this first model and will remain insignificant in subsequent models.

Prior Experience

The prior experience a judge brings with him or her to the bench was hypothesized to influence judicial decision making. This study hypothesized that judges with prior federal judicial experience would more often vote to constrict or limit religion. Prior experience had z- score of .43 and a negative direction in this first model. This indicates that prior experience is not a significant indicator of judicial voting. In addition, the negative direction of the results indicates that prior experience may influence judges to vote more conservatively. These results support previous examinations of prior experience by Bowen (1965), Goldman (1966) and Nagel (1973) which show prior experience had little or no impact of judicial decision making at the Court of Appeals level. Prior experience will remain an insignificant predictor of judicial behavior in subsequent models.

Religious Affiliation

This first model produced no significant results in the area of religious affiliation. It was hypothesized that judges claiming an evangelical faith at the time of appointment would vote more conservatively than their Jewish or Catholic counterparts. Evangelical judges had a z – score of .06 in a positive direction, while Catholic judges had a z- score of .46 in a negative direction and Jewish judges had a z- score of .15 in a negative direction. These results, though statistically insignificant, are opposite the expected results. The negative direction of Catholic and Jewish judges along with the positive direction of the Evangelical judges is opposite from existing work. The results of religious affiliation in this study do not support previous works. This discrepancy, though unusual may not be without cause. Previous studies examined death penalty, gender discrimination and obscenity cases (Songer and Tabrizi 1999) but did not focus on religious liberty cases. It may be that case type plays an important role in how religious affiliation affects judicial decision- making.

In the remaining models Catholic and Jewish judges will remain insignificant in predicting the voting behavior of judges.

Appointing Presidents

The variables for appointing president were compared to votes cast by judges appointed by Franklin Roosevelt and provide interesting results. It is hypothesized that the probability of judicial appointments made by Democratic Presidents voting vote against expanding religious activity is higher than those appointed by Republican Presidents. Table one indicates a few appointing presidents are significant indicators of

judicial decision making while several are not. G.H.W. Bush, with a z – score of .11, Ford, with a z- score of .09, Reagan, with a z-score of .08 and Clinton with a z- score of .19 are all insignificant in predicting judicial decision- making. The results of GHW Bush and Reagan appointees voting more conservatively are consistent with Carp and Rowland's (1983 and 1996) findings, but Clinton appointees voting patterns are not.

Party

The party a judge claimed at time of appointment to the Court of Appeals was expected to be an indicator of judicial behavior. It was expected that judges claiming the Democratic Party would vote to constrict religious activity more often than those judges claiming the Republican Party. Party was statistically insignificant in this model with a z- score of .25. Previous works including party have resulted in party being a highly significant predictor of judicial decision-making (Goldman 1975; Carp and Rowland 1983; Rowland and Carp 1996). The results here do not support these previous works and will continue to be insignificant in subsequent models

Model Two

A second analysis of the data included the variable for border-states instead of former Confederate States. This change in variables provided a R^2 value of .1266. Table 2 represents a slightly lower explanatory model of 12.6% or only 12.6% of the votes by judges in the religious liberty cases examined can be explained by the variables included in the model.

Table 2: Full Model with Border States

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.2068	.4461	-.46	.32
Liberal circuit	.2522	.2856	.88	.18
Border states	.6148	.3279	1.87	.03*
Age	-.0114	.0152	-.75	.22
Gender	.9607	.4216	2.27	.01*
Prior experience	-.0691	.2192	.31	.32
Catholic	-.0805	.2446	.32	.37
Jewish	-.2445	.3051	-.80	.21
Evangelical	.6095	.3914	1.55	.05*
Eisenhower	-1.9147	.9340	-2.05	.02*
GHW Bush	-1.3928	1.2140	-1.14	.12
Ford	-1.5433	1.0881	-1.41	.07
Truman	-1.8426	1.2120	-1.52	.06
Carter	-1.8463	.9989	-1.84	.03*
Kennedy	-2.3962	1.0305	-2.32	.01**
LB Johnson	-2.3862	.9360	-2.54	.01**
Nixon	-1.5861	.9613	-1.65	.04*
Reagan	-1.4088	1.0741	-1.31	.09
Clinton	-.9652	1.3055	-.73	.23
Free exercise case	1.6143	.2862	5.64	.00**
Establishment case	-.1998	.2190	-.91	.18
Religious speech case	.2306	.4130	.55	.28
Party	.0753	.1194	.63	.26
Federal government as an anti-religious plaintiff	1.254	.4834	2.59	.00**

N= 538
* = Significant variable
** = Highly significant variable

Significant Variables

Region

The inclusion of border-states in the second model was found to be significant. It was hypothesized that judges in the South would vote more conservatively than those outside of the south. Border states, which includes Kentucky, Maryland, Delaware and Missouri, were included to try to determine if there is a difference between judicial decision-

making in Southern states and the former Confederacy. Judges from border-states, with a z- score of .03 with a positive coefficient, are more likely to vote to constrict religion or religious activities.

Religion

Judges claiming evangelical religions is significant in the second model with a z – score of .05 with a positive coefficient. Again, it was hypothesized that judges claiming an evangelical faith at the time of appointment would vote more conservatively than their Jewish or Catholic counterparts and the results of model two is opposite of that hypothesis.

Insignificant Variables

Appointing President

In the second model Truman appointees had a z- score of .06. Truman appointees with border-states in the model are no longer a statistically significant indicator of judicial voting behavior. This may be because of the location of appointments by made Truman. This may also be explained by the fact that Truman was not as concerned about ideology in the appointments he made to the bench.

Model Three

A third model, represented in Table 3, included the variable Southern states in place of border-states or Confederate states. This model has a lower explanatory power than the first two models with a R^2 value of .1166 or the third model explains 11.6% of the votes in the model.

Significant Variables

Region

The variable for Southern States is included in the third model and has a z- score of .02 with a negative direction. This is in line with the hypothesis that judges from Southern States will vote more conservatively or to protect religion or religious activity.

Table 3: Full Model with Southern States (Border and Confederate Combined)

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.3181	.4417	-.72	.23
Liberal circuit	.2908	.2748	1.05	.14
Southern states	.4087	.1992	-2.05	.02*
Age	-.0062	.0149	-.42	.33
Gender	.9719	.4213	2.30	.01*
Prior experience	-.0329	.2149	-.15	.43
Catholic	-.0148	.2424	.06	.47
Jewish	-.3041	.2995	-1.01	.15
Evangelical	.6409	.3821	1.67	.04*
Eisenhower	-1.9895	.9195	-2.16	.01**
GHW Bush	-1.745	1.1954	-1.46	.07
Ford	-1.6304	1.0708	-1.52	.06
Truman	-1.7843	1.1876	-1.50	.06
Carter	-1.9517	.9804	-1.99	.02*
Kennedy	-2.2347	1.0001	-2.23	.01**
LB Johnson	-2.3011	.9208	-2.49	.00**
Nixon	-1.7242	.9438	-1.82	.03*
Reagan	-1.6305	1.0567	-1.54	.06
Clinton	-1.3419	1.2899	-1.04	.14
Free exercise case	1.5993	.2772	5.76	.00**
Establishment case	-.1332	.2147	-.62	.26
Religious speech case	.1476	.4083	.36	.35
Party	.05321	.2147	.45	.32
Federal government as an anti-religious plaintiff	1.0494	.4083	2.16	.01**

N= 563
* = Significant variable
** = Highly significant variable

Insignificant Variables

Appointing President

In the third model Truman appointees remained insignificant with a z- score of .06. Truman appointees with Southern States in the model are no longer a statistically significant indicator of judicial voting behavior.

Model Four

In the fourth analysis of the data the variable Liberal Circuit was replaced by variable Conservative Circuit and the variable Federal Government as the Anti-Religious Plaintiff was replaced by the variable Federal Government as the Anti-Religious Defendant. In addition the variable for former Confederate States has replaced Liberal Circuit. Table 4 provides a R^2 value of .1259 or explains 12.5% of the votes within the model.

Significant Variables

Circuit

This study hypothesized that judges on the fourth, fifth and tenth circuit courts would vote more conservatively or to expand or protect religion more often than judges on other courts. The Conservative Circuit variable in model 4 has a z – score of .03 and a negative direction thus indicating a conservative vote or a more probably vote to protect religion. In the remaining models, when Conservative Circuit is included it will remain significant.

Appointing President

The fourth model has Truman appointees with a z-score of .05. With the inclusion of Conservative Circuit and former Confederate States Truman, appointees are more likely to vote liberally or to constrict religion. Again, Truman may be affected by the location of his appointments to the bench. It may be the Truman appointed more judges to Conservative Circuits or former Confederate states. The inconsistency of Truman appointees implies a need for further study on his appointees.

Table 4: Full Model with Federal Government as Anti-Religious Defendant, Confederate States, Conservative Circuit and without Party

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.3346	.4525	-.73	.23
Conservative circuit	-.4679	.2487	-1.88	.03*
Confederate states	.4077	.2412	-1.69	.04*
Age	-.0100	.0151	-.66	.25
Gender	1.0225	.4303	2.37	.00**
Prior experience	-.1053	.2219	-.47	.31
Catholic	-.0020	.2454	-.008	.49
Jewish	-.4116	.3047	-1.35	.08
Evangelical	.6944	.3885	1.78	.03*
Eisenhower	-1.8322	.9202	-1.99	.02*
GHW Bush	-1.5480	1.1912	-1.30	.09
Ford	-1.5434	1.0804	-1.42	.07
Truman	-1.9027	1.1889	-1.60	.05*
Carter	-1.8059	.9828	-1.83	.03*
Kennedy	-2.1334	1.0118	-2.10	.01**
LB Johnson	-2.331	.9298	-2.50	.00**
Nixon	-1.5446	.9384	-1.64	.05*
Reagan	-1.5694	1.0519	-1.49	.06
Clinton	-1.1193	1.2880	-.86	.19
Free exercise case	1.6348	.2866	5.70	.00**
Establishment case	-.1584	.2214	-.71	.23
Religious speech case	.0827	.4115	.20	.42
Federal government as an anti-religious defendant	.1014	.2769	.36	.35

N= 538
* = Significant variable
** = Highly significant variable

Insignificant Variables

Litigant Status

The federal government as an anti-religious defendant has a z – score of .35 in a positive direction. Though it is statistically insignificant the direction of the results indicates a liberal vote, which is in accordance with the hypothesis that the federal government would be more likely to win if involved in a case.

Model 5

Table 5 indicates an analysis of the data with the case type and party of judge removed. Dropping the case type and party reduces the explanatory power of the model to 6.4%.

Table 5: Full Model without Case Type or Party

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.1603	.4249	-.37	.35
Liberal circuit	.1229	.2732	.45	.32
Confederate states	.5064	.2157	-2.34	.00**
Age	-.0079	.0144	-.55	.27
Gender	.8655	.3992	2.16	.01**
Prior experience	-.0367	.2078	-.17	.43
Catholic	-.0795	.2336	.34	.36
Jewish	-.2022	.2941	-.68	.24
Evangelical	.5593	.3782	1.47	.06
Eisenhower	-1.8328	.9108	-2.01	.02*
GHW Bush	-1.9657	1.1679	-1.68	.04*
Ford	-1.7524	1.0478	-1.67	.04*
Truman	-1.9428	1.1480	-1.69	.04*
Carter	-1.9984	.9716	-2.05	.02*
Kennedy	-2.5072	.9906	-2.53	.00**
LB Johnson	-2.4034	.9105	-2.64	.00**
Nixon	-1.9662	.9295	-2.11	.01**
Reagan	-1.7620	1.0372	-1.69	.49

(*table continues*)

Table 5 (*continued*)

Clinton	-1.3225	1.2634	-1.04	.14
Federal government as an anti-religious plaintiff	1.2567	.4690	2.67	.00**

N= 538
* = Significant variable
** = Highly significant variable

Significant Variables

Appointing Presidents

Removing the case type and party makes adds G.H.W. Bush appointees significant with a z- score of .04 and Ford appointees significant with a z –score of .04.

Insignificant Variables

Religion

Model 5, with case type and party removed, shows judges claiming evangelical religions with a z- score of.06.

Model 6

A sixth model with the party affiliation of judges removed produces a R^2 value of .1306. This model explains about 13% of the votes within the model (see table 6).

Significant Variables

Religion

Again, in this model, judges claiming evangelical faiths are significant with a z-score of .05 in a positive direction.

Insignificant Variables

Appointing President

Model 6 shows Truman to be insignificant with a z- score of .06.

Table 6: Full Model without Party

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.2211	.4460	-.492	.31
Liberal circuit	.17298	.2891	.59	.27
Confederate states	.5911	.2255	-2.62	.00**
Age	-.0096	.0152	-.63	.26
Gender	1.0205	.4286	2.38	.00**
Prior experience	-.0386	.2200	-.17	.43
Catholic	.0063	.2477	.02	.49
Jewish	-.3105	.3066	-1.01	.15
Evangelical	.6146	.3926	1.56	.05*
Eisenhower	-2.0172	.9253	-2.18	.01*
GHW Bush	-1.5671	1.2101	-1.29	.09
Ford	-1.5574	1.0865	-1.43	.07
Truman	-1.8550	1.1940	-1.55	.06
Carter	-1.8613	.9972	-1.86	.03*
Kennedy	-2.3423	1.0234	-2.28	.01**
LB Johnson	-2.3609	.9336	-2.52	.00**
Nixon	-1.6914	.9530	-1.77	.03*
Reagan	-1.5757	1.0678	-1.47	.07
Clinton	-1.1517	1.309	-.88	.18
Free exercise case	1.6340	.2860	5.71	.00**
Establishment case	-.2085	.2199	-.94	.17
Religious speech case	.2000	.4119	.48	.31
Federal government as an anti-religious plaintiff	1.1976	.4906	2.44	.00**

N= 538
* = Significant variable
** = Highly significant variable

Model 7

A seventh model, which omits the appointing president variable produces an R^2 value of .0969 or explains 9.6% of the votes within the model (see table 7). The results in this model show no differences from previous models with the exception of the explanatory power.

Table 7: Full Model without Appointing Presidents

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.3239	.4291	-.75	.22
Liberal circuit	.2880	.2648	1.08	.13
Southern states	.4405	.1959	-2.24	.01*
Age	-.0102	.0066	-1.53	.06
Gender	1.0020	.4142	2.41	.00**
Prior experience	-.0296	.2008	-.14	.44
Catholic	-.0007	.2326	.003	.49
Jewish	-.4004	.2865	-1.39	.08
Evangelical	.5532	.3770	1.46	.07
Free exercise case	1.5260	.2703	5.64	.00**
Establishment case	-.1972	.2123	-.92	.17
Religious speech case	.1096	.3965	.27	.39
Party	.0046	.0905	.05	.47
Federal government as an anti-religious plaintiff	1.0385	.4784	2.17	.01**

N= 563
* = Significant variable
** = Highly significant variable

Model 8

Model eight does not include the religious affiliation of the judges. This model explains 10.4% of the votes within the model with a R^2 value of .1045. Model 8 produced no results that differed from previous models with the exception of the explanatory power.

Table 8: Full Model without Religion

Variable	Coeff.	Std. Err.	Z	P>|z|
Race	-.0777	.3800	-.20	.41
Conservative circuit	-.33902	.2288	-1.48	.06
Confederate states	-.4874	.2256	-2.16	.01**
Age	-.0149	.0131	-1.13	.12
Gender	.7341	.3453	2.12	.01**
Prior experience	-.0836	.2097	-.39	.34

(*table continues*)

Table 8 (*continued*)

Eisenhower	-1.6208	.9104	-1.78	.03*
GHW Bush	-1.1447	1.1068	-1.03	.15
Ford	-1.0881	1.0336	-1.05	.14
Truman	-2.0037	1.1785	-1.70	.04*
Carter	-1.5115	.9315	-1.62	.05*
Kennedy	-1.9873	.9857	-2.01	.02*
LB Johnson	-2.1874	.8929	-2.45	.00**
Nixon	-1.3017	.90772	-1.43	.07
Reagan	-1.2581	.9970	-1.26	.10
Clinton	-1.4197	1.1380	-1.24	.10
Free exercise case	1.4052	.2616	5.37	.00**
Establishment case	-.2391	.2068	-1.15	.12
Religious speech case	.1264	.3841	.32	.37
Party	.0894	.1362	.65	.25
Federal government as an anti-religious defendant	.0296	.2621	.11	.45

N= 586
* = Significant variable
** = Highly significant variable

Summary

The overall results of this work are very interesting. A few models produced expected results such as female judges casting more liberal votes than male judges. Other predicted results include regional differences, with southern judges casting more conservative votes than the non-southern judges as well as conservative circuits voting in a conservative manner. Unexpected results include judges of evangelical faiths casting more liberal votes than was hypothesized and Republican appointees, specifically Eisenhower, Truman and Nixon voting more liberal than expected. The above results were mixed and this may be due to the fact that this study focused specifically on religious liberty cases and that judges act and react differently to different types of cases

CHAPTER 6

CONCLUSION

The purpose of this study was to determine if personal attributes along with specific case characteristics influenced the voting behavior of Courts of Appeals judges. The results above show that only a few predicted variables such as gender, federal governmental involvement and case type influenced judicial decision-making.

Though the statistical results and explanatory power of this study are relatively low it has produced a few surprising results. The most surprising result is Eisenhower appointments voting more liberally than Carter or Clinton appointees. The assumption was that judges appointed by Democratic presidents would vote more liberally than those appointed by Republican presidents. Eisenhower appointees tending to vote more liberally than recent democratic presidential appointees may not be all that surprising if the time period is controlled. The political spectrum from 1970s forward looks different than the political spectrum prior to 1970. Political ideology is increasingly moderate, with little political differences between republicans and democrats. As both parties move toward the center of the political spectrum, the differences in ideology of judicial appointments tends to be less as well.

A second surprising result is the lack of influence of religious background on judicial decision-making. Religion is considered to be an influential socialization factor and, at least in this study, has no statistically significant influence. This may be due to a couple of reasons. First, religion may not be time-bound. Judges appointed in the last twenty-five years may be less influenced by their religious backgrounds than those

appointed prior to the 1970s. A second explanation for the lack of influence of religious background may be due to the lack of data concerning judges' religious background. The researcher was unable to find the religious background of judges appointed after 1994.

Another interesting result found in this study was the inclusion of case type. Free exercise cases were highly significant in every model. In looking at the results, it is interesting to note that the judges in this study voted to limit free exercise in every model. One explanation for this may be the types of cases included in this study. Many of the cases termed "free exercise" consisted of conscientious objectors, tax deferments for church related property or church related services, as well as religious exercises in public schools.

Finally, the appearance of the federal government in religious liberty cases is a highly significant variable. Whether the government was acting as the anti-religious plaintiff or defendant did not matter. If the government was involved in a religious liberty case, the government received a favorable ruling a statistically significant amount of the time.

Personal attributes affect judicial decision making in other case types and therefore it can be inferred that personal attributes should affect decisions in religious liberty cases. A few variables in this research, such as gender, region and federal government involvement behaved the way they were expected, but most other variables did not. Overall, the conclusions of this study show that judges at the Courts of Appeals level are relatively faithful to the written law and precedents set down by the Supreme Court of the United States.

APPENDIX

List of Cases

ACLU of NJ v. Blackhorse Pike Ref. BOE 84 F. 3d 1471 (1996)

ACLU v. Schundler 104 F. 3d 1435 (1997)

Alexander v. Trustees of Boston University 766 F. 2d 630 (1985)

Allen v. Hickel 424 F. 2d 944 (1970)

Altman v. Bedford Central Independent School District 245 F. 3d 49 (2001)

Am Family Ass'n, Inc v. City, county of Denver Co 277 F. 3d 1114 (2001)

American Friends Service Com. Corp. v. Thornburgh 961 F. 2d 1405 (1991)

American Life League v. Reno 47 F. 3d 642 (1995)

Anderson v. Salt Lake City Corp 475 F. 2d 29 (1973)

Arnold v. BOE of Escambia Co. Alabama 880 F. 2d 305 (1989)

Austin v. Berryman 878 F. 2d 786 (1989)

Badoni v. Higgison 638 F. 2d 172 (1980)

Ballinger v. CIR 728 F. 2d 1287 (1984)

Bauchman for Bauchman v. West HS 132 F. 3d 542 (1997)

Baz v. Walters 782 F. 2d 701 (1986)

Bell v. Little Axe ISD #70 of Cle v. eland City 766 F. 2d 1391 (1985)

Berger v. Rensselar Cent School Corp 982 F. 2d 1160 (1993)

Berger v. Rensselar Cent School Corp 982 F. 2d 1160 (1993)

Bethel Baptist Church v. U.S. 822 F. 2d 1334 (1987)

Bishop v Aronov 926 F. 2d 1066 (1991)

Boyajian v. Gatzunis 212 F. 3d 1 (2000)

Branch Ministries v. Rossotti 211 F. 3d 137 (2000)

Brandon v. Board of Education of Guilderland Central ISD 635 F. 2d 971 (1980)

Brock v. Wendell's woodwork 867 F. 2d 196 (1988)

Bronx Household of Faith v. Community School Dist #10 127 F. 3d 207 (1997)

Brooks v. City of Oak Ridge 222 F. 3d 259 (2000)

Brown v. Borough of Mahaffey, Pa 35 F.3d 846 (1994)

Brown v. Dade Christian Schools Inc 556 F. 2d 310 (1977)

Brown v. Gilmore 258 F. 3d 265 (2001)

Brown v. Woodland Joint Unified School District 27 F. 3d 1373 (1994)

Brown v. Polk County Iowa 61 F. 3d 846 (1995)

Callahan v. Woods 658 F. 2d 679 (1981)

Callahan v. Woods 736 F. 2d 1269 (1984)

Cannon v. U.S. 181 F. 2d 354 (1950)

Carter v. Broadlawns Med Center 857 F. 2d 448 (1988)

Catholic High school Ass'n of Archdiocese of NY v. Culvert 753 F. 2d 1161 (1985)

Chandler v. James 180 F. 3d 1254 (1999)

Chandler v. Siegelman 230 F. 3d 1313 (2000)

Chaudhuri v. State of Tenn. 130 F. 3d 232 (1997)

Cheffer v. Reno 55 F. 3d 1517 (1995)

Chess v. Widmar 635 F. 2d 1310 (1980)

Christian Echoes Nat Ministry Inc v. U.S. 470 F. 2d 849 (1972)

Christian Gospel Church v. City/County of San Francisco 896 F. 2d 1221 (1990)

Church of Scientology Flag Service org. v. Clearwater 2 F. 3d 1514 (1993)

Church of Scientology of CA v. Cazares 638 F. 2d 1272 (1981)

City of Manchester v. Leiby 117 F. 2d 661 (1941)

Cohen v. City of Des Plaines 8 F. 3d 484 (1993)

Cole v. Oroville Union HS Dist 228 F. 3d 1092 (2000)

Cornerstone Bible Church v. City of Hastings 948 F. 2d 464 (1991)

Costello Pub Co v. Rotelle 670 F. 2d 1035 (1981)

Crain V. Board of Police Commission of Metropolitan Police department of St Louis 920 F. 2d 1210 (1990)

Cuesnongle v. Ramos 713 F. 2d 881 (1983)

Dayton Christ Schools Inc v. Ohio Civil Rights Commission 766 F. 2d 932 (1985)

Decker v. O'Donnell 661 F. 2d 598 (1980)

Doe v. Duncanville ISD 70 F. 3d 402 (1995)

Dole v. Shenandoah Baptist Church 899 F. 2d 1389 (1990)

Donovan v. Tony and Susan Alamo Foundation 722. F. 2d 397 (1983)

Droz v. CIR 48 F. 3d 1120 (1995)

Ecclesiastical Order of Ism of Am v. IRS 725 F. 2d 398 (1983)

EEOC v. Freemont Christian School 781 F. 2d 1362 (1986)

EEOC v. Mississippi College 626 F. 2d 477 (1980)

EEOC v. Pacific Press Publishing Assn 676 F. 2d 1272 (1982)

EEOC v. Southwestern Baptist Theological Seminary 651 F. 2d 277 (1981)

EEOC v. Townley Engineering and Man. 859 F. 2d 610 (1988)

Ehlers - Renzi v. Connelly School of Holy Child Inc 224 F. 3d 283 (2000)

Espinosa v. Rusk 634 F. 2d 477(1980)

Fairfax Covenant Church v. Fairfax city school board 17 F. 3d 703 (1994)

Faustin v City, county of Denver CO 268 F. 3d 942 (2001)

Fellowship Baptist Church v. Benton 815 F. 2d 485 (1987)

Fernandes v. Limmer 663 F. 2d 619 (1981)

Fielder v. Marumsco Christian School 631 F. 2d 1144 (1980)

First Assembly of God of Naples v. Collier City. PA 20 F. 3d 419 (1994)

Fleischfresseer v. Directors of School Board District 200 15 F. 3d 680 (1994)

Flores v. City of Boerne 73 F. 3d 1352 (1996)

*Florey v. Sioux Falls School Dist #49-5*619 F. 2d 1311 (1980)

Forest Hills Learning Center v. Grace Baptist Church 846 F. 2d 260 (1988)

Forest Hills Learning Center v. Lukhard 728 F. 2d 230 (1984)

Fraternal Order of Police Newark lodge #12 v. City of Newark 170 F. 3d 359 (1999)

Gaudiyavaishnaua Soc. V. City/County of SF 952 F. 2d 1059 (1990)

Genas v. State of NY dept of Correctional Ser v. ice 75 F. 3d 1352 (1996)

Gentala v. City of Tucson 244 F. 3d 1065(2001)

George v. U.S. 196 F. 2d 445 (1952)

Gilfillan v. City of Philadelphia 673 F. 2d 924 (1980)

Goehring v. Brophy 94 F. 3d 1294 (1996)

Golden v. Biscayne Bay Yacht Club 521 F. 2d 344 (1975)

Goldman v. Sec of Def 734 F. 2d 1531 (1984)

Goluba v. School District of Ripon 45 F. 3d 1035 (1995)

Goodall by Goodall v. Stafford County School Board 60 F. 3d 168 (1995)

Gordon v. State of Idaho 778 F. 2d 1397 (1985)

Graham v. CIR 822 F. 2d 844 (1987)

Grand Jury proceeding of John Doe v. U.S. 842 F. 2d 244 (1988)

Granfield v. Catholic Um of Am 530 F. 2d 1035 (1976)

Gray v. Gulf M & OR Co 429 F. 2d 1064 (1970)

Grosz v. City of Miami Beach, FL 721 F. 2d 729 (1983)

Grosz v. City of Miami Beach, FL 82 F. 3d 105 (1996)

Grove v. Mead School Dist # 354 753 F. 2d 1528 (1985)

Hall v. American Nat'l Red Cross 86 F. 3d 919 (1996)

Hannan v. City of Havenhill 120 F. 2d 87 (1941)

Harris v. Joint School District No 241 41 F. 3d 447 (1994)

Hatch v. Goerke 502 F. 2d 1189 (1974)

Henderson v. Kennedy 253 F. 3d 12 (2001)

Hernandez v. CIR 819 F. 2d 1212 (1987)

Hershinow v. Bonamarte 735 F. 2d 264 (1984)

Holdridge v. U.S. 282 F. 2d 302 (1960)

Hopper v. U.S. 142 F. 2d 181 (1943)

Ingebretsen on behalf of Ingebretsen v. Jackson Public School 88 F. 3d 274 (1996)

Int. soc for Krishna Consciousness v. Rockford 585 F. 2d 263 (1978)

Int. Society for Krishna Consciousness of Houston v. Houston 589 F. 2d 541 (1982)

Int. Society for Krishna Consciousness v. Barber 650 F. 2d 430 (1981)

Intercommunity Center for Justice and Peace v. INS 910 F. 2d 42 (1990)

ISKCON of Potomac v. Kennedy 61 F. 3d 949 (1995)

Islamic Center of Miss v. City of Starkville Miss 840 F. 2d 293 (1988)

Jews for Jesus v. Hikksborough County Aviation Authority 162 F. 3d 1134 (1998)

Johns v County of San Diego 114 F. 3d 874 (1997)

Katcoff v. Marsh 755 F. 2d 223 (1985)

King's Garden Inc v. FCC 498 F. 2d 51 (1974)

Knight v. Conn Dept of Public health 275 F. 3d 156 (2001)

Knights of Columbus Council #94 v. Town of Lexington 272 F. 3d25 (2001)

Lakewood, Ohio Congregation of Jehovah Witnesses v. City of Lakewood 699 F. 2d 303 (1983)

Lanner v. Swimmer 662 F. 2d 1349 (1981)

Leahy v. D.C. 833 F. 2d 1046 (1987)

Linscott v. Millers Fall Co 440 F. 2d 14 (1971)

Littlefield v. Forney Ind. School Dist. 268 F. 3d 275 (2001)

Living Faith Inc v. CIR 950 F. 2d 365 (1991)

Lubbock Civil liberties union v. Lubbock ISD 669 F. 2d 1038 (1982)

Lutchen v. Musicians Union Local 47 633 F. 2d 880 (1980)

Manybeads v. U.S. 209 F. 3d 1164 (2000)

Marchi v. Board of Coop. Ed. Ser v. ices of Albany 173 F. 3d 469 (1999)

McClure v. Salvation Army 460 F. 2d 553 (1972)

McCury v. Tesch 738 F. 2d 271 (1984)

McKay v. Thompson 226 F. 3d 752 (2000)

Menora v. Illinois HS Association 683 F. 2d 1030 (1982)

Michener v. U.S. 184 F. 2d 712 (1950)

Miller v. IRS 829 F. 2d 500 (1987)

Miller v. Reed 176 F. 3d 1202 (1999)

Mockaitis v. Hacleroad 104 F. 3d 1522 (1997)

Mozert v. Hawkins City BOE 827 F. 2d 1058 (1987)

Muller by Muller v. Jefferson Lighthouse School 98 F. 3d 1503 (1996)

Munn v. Algee 924 F. 2d 568 (1991)

Murphy v. State of Arkansas 852 F. 2d 1039 (1988)

Murray v. City of Austin, Texas 947 F. 2d 147 (1991)

Nelson v. U.S. 796 F. 2d 164 (1986)

New Life Baptist Church Academy v. Town of East Longmeadow 885 F. 2d 940 (1989)

New Rider v. Board of Education of Independent School District No 1, Pawnee City Ok 480 F. 2d 693 (1973)

NJ-Phil Presbytery of the Bible Presbyterian Church v. NJ Board of Higher Education 654 F. 2d 868 (1981)

NW Indian Cemetery Protective Organization v. Peterson 795 F. 2d 688 (1986)

Ogden v. U.S. 758 F. 2d 1168 (1985)

Olsen v. CIR 709 F. 2d 278 (1983)

Olsen v. DEA 878 F. 2d 1458 (1989)

Otero v. State Election Board of OK 975 F. 2d 738 (1992)

Paul v. Watchtower Bible and Tract Society of New York 817 F. 2d 875 (1987)

Paulson v. City of San Diego 262 F. 3d 885 (2001)

Peck v. Baldwinsville SBOE 7 Fed Appx 74 (2001)

Peter v. Wedl 155 F. 3d 992 (1998)

Peterson v. Minidoka Co. School Dist #331 118 F. 3d 1351 (1997)

Peyote Way Church of God v. Smith 742 F. 2d 193 (1984)

Peyote Way Ch of God v. Thornburgh 922 F. 2d 1210 (1991)

Phan v. Commonwealth of VA 806 F. 2d 516 (1986)

Philbrook v. Ansonia BOE 757 F. 2d 476 (1985)

Pinette v. Capitol Square Re v. iew and Ad v. isory Board 30 F. 3d 675 (1994)

Port v. Herd 764 F. 2d 423 (1985)

Potter v. Murray city 760 F. 2d 1065 (1985)

Quaring v. Peterson 728 F. 2d 1121 (1984)

Rayburn v. Gen Conf of Seventh Day Adventist 772 F. 2d 1164 (1985)

Rector Wardens and Members of Vestry of St Bart's Church v. NYC 914 F. 2d 348 (1990)

Robinson v. Price 615 F. 2d 1097 (1980)

Roodenku v. U.S. 147 F. 2d 752 (1944)

Rosen v. Port of Portland 641 F. 2d 1243 (1981)

Salvation Army v. Dept of Community Affairs NJ 919 F. 2d 183 (1990)

Scott v. Rosenberg 702 F. 2d 1263 (1983)

Sequoyah v. TVA 620 F. 2d 1159 (1980)

Shelton v. University of Medical and Dentistry of NJ 223 F. 3d 220 (2000)

Sherman v. Community Consolidated School dist 21 of Wheeling TP 980 F. 2d 437(1993)

Sherwin Manor Nursing Center v. McAuliffe 37 F. 3d 1216 (1994)

Simpson v. Wells Lamont Corp 494 F. 2d 400 (1974)

Smilow v. U.S. 465 F. 2d 802 (1972)

Smith by Smith v. BOE North Babylon Union Free School Dist 844 F. 2d 90 (1988)

Snyder v. Murray City Corp 124 F. 3d 1349 (1997)

Southridge Baptist. Church v. Industrial Comm of Ohio 911 F. 2d 1203 (1990)

Spence v. Bailey 465 F. 2d 797 (1972)

St Elizabeth Community Hospital v. NLRB 708 F. 2d 1436 (1983)

St German of Alaska Eastern Orthodox Church v. U.S. 840 F. 2d 1087 (1988)

Stein v. Oshinsky 348 F. 2d 299 (1965)

Strout v. Albanese 178 F. 3d 57 (1999)

Surinach v. Pesquerade Besquets 604 F. 2d 73 (1979)

Swanson by & through Swanson v. Guthrie ISD 135 F. 3d 694 (1998)

Tarsney v. O'Keefe 225 F. 3d 929 (2000)

Thiry v. Carlson 78 F. 3d 1491 (1996)

Thomas v. Anchorage Equal Rights Commission 220 F. 3d 1134 (1998)

Thomas v. Nat'l Assn of letter carriers 225 F. 3d 1149 (2000)

Tucker v. State of Cal Dept of Education 97 F. 3d 1204 (1996)

U.S. *v. Bertram* 477 F. 2d 1329 (1973)

U.S. *v. Board of Education School Dist of Philadelphia* 911 F. 2d 882 (1990)

U.S. *v. Craft* 423 F. 2d 829 (1970)

U.S. *v. Estep* 150 F. 2d 768 (1945)

U.S. *v. Grayson County State Bank* 656 F. 2d 1070 (1981)

U.S. *v. Indianapolis Baptist Temple* 224 F. 3d 627 (2000)

U.S. *v. Jakobson* 325 F. 2d 409 (1963)

U.S. *v. Means* 858 F. 2d 404 (1988)

U.S. *v. Middleton* 690 F. 2d 820 (1982)

U.S. *v. Mowat* 582 F. 2d 1194 (1978)

U.S. *v. Schmucker* 721 F. 2d 1046 (1983)

U.S. *v. Schmucker* 815 F. 2d 413 (1987)

U.S. *v. Scopo* 861 F. 2d 339 (1988)

U.S. *v. Tolla* 781 F. 2d 29 (1986)

Van Bibber v. U.S. 151 F. 2d 444 (1945)

Vandiver v. Hardin County Board of Education 925 F. 2d 927 (1991)

Venters v. City of Delphi 123 F. 3d 956 (1997)

Vernon v. City of LA 27 F. 3d 1385 (1994)

Volunteers of Am - Minn - Bar None Boys Ranch v. NLRB 752 F.2d 345 (1985)

Walsh v. LA HS Athletic Assoc 616 F. 2d 152 (1980)

Warner v. Graham 845 F.2d 779 (1988)

Warren v. U.S. 177 F. 2d 596 (1949)

Watchtower Bible & Tract Society of NY v. Village of Stratton OH 240 F.3d 553 (2001)

Wells v. City and County of Denver CO 257 F.3d 1132 (2001)

Western Mohegan Tribe and Nation of NY v. NY 246 F.3d 230 (2001)

Wilder v. Bernstein 848 F.2d 1338 (1988)

Wilkins v. U.S. 279 F.3d 782 (2002)

Wilson v. Block 708 F. 2d 735 (1983)

Wilson v. NLRB 920 F.2d 1282 (1990)

Winters v. CIR 468 f. 2d 778 (1972)

WJM ex rel KDM v. Reedsport School District 196 F.3d 1046 (1999)

Yonkers Racing Corp v. City of Yonkers 858 F.2d 855 (1988)

Yott v. North American Rockwell Corp 501 F.2d 398 (1974)

Zobrest v. Catalina Foothills school district 963 F.2d 1190 (1992)

REFERENCE LIST

Barnard, Jesse. 1955. "Dimensions and Axes of Supreme Court Decisions: A Study in the Sociology Conflict." *Social Forces.* 34: 19-27.

Baum, Lawrence W. 1989. *The Supreme Court*. 3d ed. Washington, DC: Congressioanl Quarterly Press.

Bowen, Don R. 1965. "The Explanation of Judicial Voting from Sociological Characteristics of Judges." Ph.D Dissertation, Yale University.

Campbell, Bruce A. 1979. *The American Electorate: Attitudes and Action*. New York: Holt, Rinehart and Winston.

Canon, Bradley C. and Michael Giles. 1972. "Recurring Litigants: Federal Agencies Before the Supreme Court." *Western Political Quarterly*. 25: 183-191.

Carp, Robert A. and C.K. Rowland. 1983. *Policy-making and Politics in Federal District Courts*. Knoxville: University of Tennessee Press.

Carp, Robert A. and Ronald Stidham. 1993. *Judicial Process in America*. Washington D.C.: CQ Press.

Cook, Beverly. 1981. "Will Women Judges Make a Difference in Women's Legal Rights? A Prediction from Attitudes and Simulated Behavior." In *Women and Political Systems*. ed. Margherita Rendel. St Martin's Press.

Cord, Robert. 1982. *Separation of Church and State*. New York: Lambeth Press.

Davis, Sue. 1986. "The Impact of President Carter's Judicial Selection Reforms: A Voting Analysis of the United States Courts of Appeals." *American Politics Quarterly*. 14: 320-44.

Demaris, Alfred. 1992. *LOGIT Modeling: Practical Applications*. Newbury Park: Sage University Press.

Galanter, Marc. 1974. "Why the Haves Come Out Ahead: Speculations on Limits of Legal Change." *Law and Society Review*. 9: 95-106.

Goldman, Sheldon. 1966. Voting Behavior on the United States Courts of Appeals 1961-1964." *American Political Science Review*. 60:374-383.

----------. 1975. Voting Behavior on the United States Courts of Appeals 1961-1964, Revisited." *American Political Science Review*. 69:491-506

Gottschall, Lon. 1983. "Carter's Judicial Appointments: The Influence of Affirmative Action and Merit Selection on Voting on the U.S. Courts of Appeals." *Judicature* 67:164-73.

Gruhl, John, Cassia Spohn, and Susan Welch. 1981. "Women as Policymakers: The Case of Trial Judges." *American Journal of Political Science*. 2: 308-22.

Haines, Charles Grove. 1922. "General Observations on the Effects of Personal, Political and Economic Influences in the Decisions of Judges." Schubert's (ed) *Judicial Behavior: A Reader in Theory and Research*. Chicago: Rand McNally and Company, pp. 40-50.

Holmes, Malcolm D., Harmon M. Hosch, Howard C. Daudistel, Dolores A. Perez, and Joseph P. Graves. 1993. "Judges Ethnicity and Minority Sentencing: Evidence Concerning Hispanics." *Social Science Quarterly*. 74: 496-506.

Howard, J. Woodford. 1981. *Courts of Appeals in the Federal Judicial System: A Study of the Second, Fifth and District of Columbia Circuits*. Princeton: Princeton University Press.

Ippolito, Dennis S., Thomas G. Walker, and Kenneth L. Kolson. 1976. *Public Opinion and Responsible Democracy*. Englewood Cliffs, NJ: Prentice Hall.

Johnston, Richard. 1976. "Supreme Court Voting Behavior: A Comparison of the Warren and Burger Courts." In Robert L. Peabody (ed.), *Cases in American Politics*. New York: Praeger, pp. 71-110.

Kellstedt, Lyman A. and John C. Green. 1993. "Knowing God's Many People: Denominational Preference and Political Behavior." In *Rediscovering the Religious Factor in American Politics*. ed. David C. Leege and Lyman A Kellstedt. Armonk, NY: M.E. Sharpe.

Kilwein, John C. and Richard Brisbin Jr. 1997. "Policy Convergence in a Federal Judicial System: The Application of Intensified Scrutiny Doctrines by State Supreme Courts.' *American Journal of Political Science* 41:122-148.

Kritzer, Herbert M. and Thomas Uhlman. 1977. "Sisterhood in the Courtroom: Sex of Judge and Defendant in Criminal Case Disposition." *Social Science Quarterly*. 14: 77-88.

Leege, David C. 1993. "Religion and Politics in Theoretical Perspective." In *Rediscovering the Religious Factor in American Politics*. eds. David C. Leege and Lyman A Kellstedt. Armonk, NY: M.E. Sharpe.

Meyers, Martha A. 1988. "Social Backgrounds and the Sentencing Behavior of Judges." *Criminology.* 26: 649-75.

Murphy, Walter F. 1959. "Lower Court Checks on Supreme Court Power." *American Political Science Review* 53: 1017-1031.

Nagel, Jack H. 1961a. "Political Affiliation and Judges Decisions." *American Political Science Review* 55:843-850.

---------. 1961b. "Ethnic Affiliation and Judicial Propensities." *Journal of Politics.* 24:92-110.

---------. 1969. *The Legal Process from a Behavioral Perspective.* Homewood, Ill.: Dorsey Press.

---------. 1974. "Political Party Affiliation and Judges' Decisions." *American Political Science Review* 55: 843-50.

O'Brien, David M. 1997. *Constitutional Law and Politics: Civil Rights and Liberties.* New York: WW Norton and Company.

Pritchett, C. Herman. 1948. *The Roosevelt Court*. Macmillan: New York.

Pritchett, C. Herman. 1994. *Constitutional Civil Liberties.* Prentice Hall, Inc.: New Jersey.

Richardson, Richard J. and Kenneth N. Vines. 1970. *The Politics of Federal Courts*. Boston: Little Brown.

Rotmen, Victor W. (1942) "Recent Restrictions Upon Religious Liberty." *American Political Science Review* 36:6 1053-1068.

Rowland, C.K. and Robert Carp. 1996. *Politics and Judgments in Federal District Courts*. University Press of Kansas: Lawrence, Kansas.

Schmidhauser, John R. 1961. "Judicial Behavior and the Sectional Crisis of 1837-1860." *Journal of Politics* 23: 615-

---------- 1962. "*Stare decisis,* Dissent and the Backgrounds of the Justices of the Supreme Court of the United States". *U. Of Toronto Law Journal.*

Segal, Jeffrey A. and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.

---------. 1999. *Majority Rule or Minority Will: Adherence to Precedent on the United States Supreme Court*. New York: Cambridge University Press.

Segal, Jeffrey. 1996. "The Influence of *Stare decisis* on the Votes of United States Supreme Court Justices." *American Journal of Political Science* 40:971-1003.

Sheehan, Reginald, William Mischler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court." *American Political Science Review*. 86: 464-71.

Smith, Michael David. 1983. *Race Versus Robe*. Port Washington, NY: Associated Faculty Press, Inc.

Snyder, Eloise. 1956. *A Quantitative Analysis of Supreme Court Opinions for 1920-1953: A Study of Response of an Institution Engaged in Resolving Conflict*. Ph.D. Dissertation, Pennsylvania State University.

Songer, Donald. 1982. "Consensual and Nonconsensual decisions in Unanimous Opinions of the United States Courts of Appeals." *American Journal of Political Science* 26:225-239.

---------. 1987. The Impact of the Supreme Court on Trends in Economic Policy Making in the United States Courts of Appeals." *Journal of Politics* 49: 830-841.

---------. 1991. "An Overview of Judicial Policymaking in the United States Courts of Appeals." In John B. Gates and Charles Johnson Eds. *The American Courts: A Critical Assessment* (Washington D.C.: Congressional Quarterly) 43-54.

---------. 1991. "The Circuit Courts of Appeals." In *The American Courts, A Critical Assessment*, ed. John B. Gates and Charles A. Johnson. Washington D.C.: Congressional Quarterly Press.

Songer, Donald and Reginald Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36:235-258.

Songer, Donald and Susan Haire. 1992. "Integrating Alternative Approaches to the Study of Judicial Voting: Obscenity Cases in the United States Courts of Appeals." *American Journal of Political Science* 36:963-982.

Songer, Donald, Jeffrey Segal and Charles Cameron. 1994. "The Hierarchy of Justice: Testing a Principal Agent Model of Supreme Court – Circuit Court Interactions." *American Journal of Political Science*. 38:673-696.

Songer, Donald and Kelly Crews-Meyer. 2000. Does Gender Matter? Decision Making in State Supreme Courts. *Social Science Quarterly*. 81: 750-762.

Songer, Donald, Sue Davis and Susan Haire. 1994. "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Court of Appeals." *Journal of Politics* 56:435-439

Songer, Donald and Susan J. Tabrizi. 1999. "The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts." *Journal of Politics* 61:507-26.

Spaeth, Harold J. 1990. "Supreme Court Disposition of Federal Court Decisions" in Harold Spaeth and Saul Brenner's *Studies on the United States Supreme Court Behavior*. (New York: Garland Publishing) pp. 317-330.

Spriggs, James F. and Thomas G. Hansford. 2000. "Measuring Legal Change: The reliability and Validity of Shepard's Citations," *Political Research Quarterly* 53:

Steffensmeier, Darrell and Chris Herbert. 1999. "Women and Men Policymakers: Does the Judges Gender Affect the Sentencing of Criminal Defendants?" *Social Forces*. 77: 1163-1196.

Stern and Gressman 1978. *Supreme Court Practice*. Washington, D.C.: The Bureau of National Affairs.

Stidham, Ronald and Robert C. Carp. (1995). Indian Rights of North America. *Social Science Journal* 32

Tanenhaus, Joseph. 1960. "Supreme Court Attitudes Toward Federal Administrative Agencies." *Journal of Politics*. 22: 502-524.

Tate, Neal C. 1981. Personal Attribute Models of the Voting Behaviors of US Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions 1946-1978." *American Political Science Review* 75:355-367.

---------. 1996. Courts and Judicial Policy Making: An Introductory Survey. Unpublished work.

Tate, C. Neal and Roger Handberg. 1991. "Time binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-1988." *American Journal of Political Science* 35:460-480.

Uhlman, Thomas M. 1978. "Black Elite Decision-Making." *American Journal of Political Science*. 22:884-95.

Ulmer, S. Sydney. 1973. "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956 Terms." *American Journal of Political Science*. 17: 622-630.

-------- 1985. "Governmental Litigants, Underdogs, and Civil Liberties in the Supreme Court: 1903- 1968 Terms." *The Journal of Politics*. 47: 899-909.

Urofsky, Melvin I. 2002. *Religious Freedom: Rights and Liberties Under the Law*. Santa Barbara, CA: ABC-CLIO, Inc.

Walker, Thomas and Deborah Barrow. 1985. "The Diversification of the Federal Bench: Policy and Process Ramifications". *Journal of Politics* 47:596-617.

Welch, Susan, Michael Combs, and John Gruhl. 1988. "Do Black Judges Make a Difference." *American Journal of Political Science*. 32: 126-136.

Wheeler, Stanton, Bliss Cartwright, Robert Kagan, and Lawrence Friedman. 1987. "Do the 'Haves' Come Out Ahead? Winning and Losing in the State Supreme Court." *Law and Society Review*. 21: 403-45.